Feb 11th 1-367 Judge Davis
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Affirmed
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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 144.

MARY R. KOHL, JOHN W. KOHL, EXECUTORS OF JOHN S. KOHL, DECEASED; MRS. W. H. STEYER AND W. H. STEYER, HER HUSBAND; EDWARD A. KOHL, LOUIS H. KOHL, AND IDA P. KOHL, PLAINTIFFS IN ERROR,

VS.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED JANUARY 28, 1874.

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1 At a stated term of the circuit court of the United States within and for the sixth judicial circuit and southern district of Ohio, begun and held at the city of Cincinnati, in said district, on the first Tuesday of October, being the seventh day of that month, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States of America the ninety-eighth—Present, the honorable Philip B. Swing, one of the judges.

Among the proceedings had were the following, to wit:

THE UNITED STATES OF AMERICA
vs.
INLOTS 118, 119, 143, & 144 IN THE CITY OF Cincinnati, being half square bounded by 5th st., Main, Walnut street & Patterson alley.

1767. Application for appropriation of property for post-office, &c.

Be it remembered that heretofore, to wit, on the 24th day of July, in the year of our Lord one thousand eight hundred and seventy-three, came the United States of America, by Warner M. Batemen, its attorney, and filed in the clerk's office of the court aforesaid its application for appropriation of property for post-office, &c., herein; which said application is in the words and figures following, to wit:

Application.

2 United States circuit court, southern district of Ohio.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
INLOTS NUMBER 118, 119, 143, AND 144, IN THE city of Cincinnati, and State of Ohio, being the half square bounded on the south by Fifth street, on the east by Main street, on the west by Walnut street, and on the north by Patterson alley.

The United States of America, by Warner M. Bateman, its attorney, comes and represents:

First. That, by an act of the general assembly of the State of Ohio, passed April 20th, 1872, the consent of the State of Ohio was given to the purchase by the United States of one or more pieces of land, situated in the city of Cincinnati, and State of Ohio, not exceeding four acres in quantity, on which to erect a custom-house, post-office, and other Government buildings and appurtenances, for the use of the United States; the title to the said lands not to vest in the United States until acquired by purchase or grant, or by lawful appropriation under the right of eminent domain, and subject to certain conditions therein expressed and set forth.

Second. That, by another act of the general assembly of the State of Ohiso, passed February 15, 1873, the United States was authorized to acquire the land for the purposes above designated by appropriation, and for such purpose to proceed according to the act entitled

3 "An act prescribing the mode of assessment and collection of compensation to the owners of private property appropriated by and to the use of corporations," passed April 23d, 1872.

Third. That, by an act of Congress approved March 12th, 1872, the Secretary of the Treasury of the United States was therein authorized

and directed to purchase a suitable site for the erection of a building for the accommodation of the United States courts, custom-house, United States depositary, post-office, and other Government buildings in the city of Cincinnati, Ohio; and the said act was further amended on June 10, 1872, by which a sum of money was therein appropriated and set apart for the purchase at private sale or by condemnation of land for the purposes hereinbefore set forth; and thereupon the Secretary of the Treasury of the United States selected the following-described real property for such purpose, viz:

"All that tract of land situate in the city of Cincinnati, State of Ohio, and bounded on the south by Fifth street Market space, on the east by Main street, on the west by Walnut street, and on the north by Patterson alley, containing about two acres of land, more or less, and being the inlots numbered respectively 118, 119, 143, 144, on the original plat of the city of Cincinnati, and comprising within it the several parcels and tracts of land hereinafter described and set forth, and numbered respectively lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24; and also as described, marked, and numbered
4 upon the plat hereto annexed, and made a part of this petition for an appropriation.

Fourth. That the United States, by its proper officers and authorized agent, offered to purchase the site aforesaid of the several owners of said property for the purposes aforesaid, but were unable to agree as to the value thereof, and thereupon the Secretary of the Treasury of the United States authorized the said attorney for the United States to institute the proper proceedings for obtaining the title to said land for the public use as aforesaid.

Fifth. That the several parties made defendants in this action own, and claim to own, or have some interest in, or title to, the land and property herein described and proposed to be taken for the public use for the site of a post-office and other Government buildings as aforesaid, and that the value of said land is over five thousand dollars.

No. 1 *Lot No.* 2.—On west side Main street, commencing at the southwest corner of Main street & Patterson alley; running thence west with Patterson alley one hundred & ninety-eight (198) ft. to inlot 144; thence south forty-eight (48) ft.; thence east forty-seven (47) ft., more or less, to the property of Charlotte L. Haines; thence north eighteen (18) ft.; thence east one hundred & fifty-one (151) ft. to the place of beginning, in which premises to the following-named persons hold, or claim to hold, an estate, title, or interest: Joseph N. A. Benzinger and Frank Heitz, C. H. Stander, T. C. Nichols.

No. 2.—Lot on the west side of Main street, commencing thirty
5 (30) feet south of Patterson alley, running thence south with Main street 18 ft., & thence westwardly same width in rear as in front one hundred & fifty-one (151) ft., more or less, in which premises the following-named persons hold, or claim to hold, an estate, title, or interest: Charlotte L. Haines and S. W. Herdacker.

No. 3. *Lot No.* 3.—Lot on the west side of Main street, commencing nine (9) inches south of the southeast corner of inlot (No. 119,) running thence north with Main st. forty-five and a half (45½) ft., more or less, to the lot last above described, and running back westwardly one hundred and fifty-one (151) ft., more or less, same width in rear as in front, in which premises the following-named persons hold, or claim to hold, an estate, title, or interest: Samuel F. Cary, Ella W. Sayre, Edward Sayre, her husband; I. P. Strauss and Joseph Strauss, as Strauss & Brother; Charles Wautman, Julius Boushers, Tunine and Rabbe.

No. 4. *Lot No.* 4.—Lot on the west side of Main street, commencing nine inches (9) in south of the northeast corner of inlot 118, at the south line of lot No. 3, as above described and numbered, running thence south with Main street 16 ft., more or less, & running back westwardly one hundred and thirty-six (136) ft., same width in rear as in front, in which premises the following-named persons hold, or claim to hold, an estate, title, or interest: John B. Brummer and H. H. Ahlering.

6 *No.* 5. *Lot No.* 5.—Lot on the west side of Main street, commencing sixty-eight (68) ft. north of Fifth street, running thence sixteen (16) ft, more or less, north with Main street to the south line of lot No. 4, as above described and numbered, and running back westwardly, same width in rear as in front, one hundred and thirty-six (136) feet, in which the following-named persons hold, or claim to hold, an estate, title, or interest: Francis Demand, John Demand, Mary Demand, Cecelia Demand, Ella Demand, Carrie Demand, (a minor of fifteen years of age,) Clara Demand, (a minor of fourteen years of age,) and Matthias Demand, (a minor eight years of age;) "Home Society Building Association," of Cincinnati, A. S. Hoffman.

No. 6. *Lot No.* 6.—Lot on the southeast corner of inlot 118, at the northwest corner of Main and Fifth streets, sixty-eight (68) ft., more or less, to the south line of lot No. 5, as above described and numbered; running thence west fifty (50) ft.; thence south twelve (12) ft.; running thence east twelve (12) ft.; running thence south fifty-five (55) ft. to Fifth street; running thence east thirty-eight and a half (38½) ft., more or less, to the place of beginning, in which premises the following named persons hold, or claim to hold, an estate, title, or interest: Mary A. Field, Henry S. Field, and Charles W. Sloan, H. R. Struve, Samuel Nathan, S. Gastaral.

7 *No.* 7. *Lot No.* 7.—Lot on the north side of Fifth street, commencing about thirty-eight and one-half (38½) ft. west of Main street, at the west line of lot No. six, (6,) as above described and numbered; running thence west twenty-one feet eleven & one-half inches, (21 ft. 11½ in.;) running thence back, same width in rear as in front, fifty (50) ft., in which premises the following named persons hold, or claim to hold, an estate, title, or interest: William P. Hurlbert, Henry Wineman, Joseph Wineman, Leo Wineman, Samuel Nathan, of Wineman, Sons & Co., John Devoto.

No. 8. *Lot No.* 8.—Lot on the north side of Fifth street, commencing about sixty and one-half (60½) ft. west of Main street, at the west line of lot number seven, (7,) as above described and numbered; running thence west thirty-two feet nine inches, (32 ft. 9 in.,) more or less; and running thence northwardly, same width in rear as in front, fifty feet, (50 ft.,) in which premises the following named persons hold, or claim to hold, an estate, title, or interest: Allen W. Gazley, E. J. Fogarty, J. Fishwick, George Miller.

No. 9. *Lot No.* 9. Lot on north side of Fifth street, commencing ninety-one (91) feet west of the northwest corner of Main and Fifth streets, at the west line of lot number eight, (8,) as above described and numbered; thence west to Fifth street twenty-four feet seven inches, (24 ft. 7 in,) to the east line of A. Babenger's lot; running thence north sixty-eight (68) ft. to the south line of lot number five (5) above described and numbered; running thence east thirty-eight feet seven inches,

8 (38 ft. 7 in.,) running south twelve feet (12) *ft.*; running thence west fourteen feet, (14 ft.;) thence south fifty-six (56) ft. to Fifth street, in which premises the following named persons hold, or claim to hold, an estate, title, or interest: William P. Hurlbert, J. H. Mann.

No. 10. *Lot No.* 10. The irregular lot in inlot 118, commencing on the northeast corner of lot No. seven, (7,) as above numbered and described, thirty-eight and a half (38½) ft., more or less, west of Main street; running thence to rear of lines of lots number seven (7) and eight (8) as above described & numbered, fifty-four and three-fourths feet, (54¾,) to lot number nine, (9,) as above described and numbered; thence north six (6) ft.; thence east fourteen feet with the lines of lot nine (9) as herein numbered and described; thence north twelve (12) feet to the south line of lot number five, (5,) above numbered and described; thence east twenty-nine and a half (29½) ft., south six (6) ft.; thence east twelve (12) ft.; thence south six (6) ft., more or less, with the lines of said lot number (6) to the place of beginning, in which premises the following named persons hold, or claim to hold, an estate, title, or interest: William P. Hulbert, Allen W. Gazlay, Mary A. Field, Henry W. Field, & Charles W. Sloan, Samuel F. Cary, Ella W. Sayre, & Edward Sayre.

No. 11. *Lot No.* 11. Lot on the north side of Fifth street, commencing forty-six (46) feet east of the southwest corner of inlot numbered
9 one hundred and eighteen, (118;) running thence east thirty-six and one-half feet (36½ ft.) to the line of lot numbered; running thence north sixty-eight (68) ft. more or less, to the property of Francis Demand, number (5,) five, as the above described and numbered; thence west nineteen feet (19 ft.) to the southwest corner of said defendant's lot; thence north thirty-one (31) ft. ten inches (10 in.,) more or less, to lot numbered; thence west seventeen and one-half feet, (17½ ft.;) thence south ninety-nine (99) feet to Fifth street, of which the following parties claim interest as owners: Mrs. Charlotte Taylor & John Taylor, Mrs. Catherine Hart, (widow,) Mrs. Margaret Pharis, (widow,) John Taylor, Charles Taylor, Abraham B. Taylor, William Taylor, Edwin Taylor, Eliza Taylor, Abraham Pharis, John Pharis, Amelia Pharis, Charlotte Taylor; Eliza Taylor, Abraham Pharis, John Pharis, Amelia Pharis, Kate Pharis and Peters, her husband; Theresa Roberts and Aaron Roberts; Catharine Baker and T. Frank Baker; Caroline Horton and Benjamin Horton, of St. Louis, Mo.; Charlotte Cooper & S. S. Cooper; William Hart, John Hart, B. Frank Hart, (a minor,) & Amia C. Yourtee; and Samuel Yourtee, heirs and devisees of Abraham Babenger, G. J. West, G. W. White, (Samuel Walker.)

No. 12. *Lot No.* 12.—Lot on the north side of Fifth street, commencing nineteen feet (19) *ft.* east of the southwest corner of inlot number one hundred and eighteen, (118;) running thence east twenty-seven (27) ft. to the line of lot number eleven, (11,) above described; running thence north same width in rear as in front, along west line of lots number eleven (11) and three, (3,) above described, and numbered one
10 hundred and forty-three and two-thirds (143⅔) ft. to lot No. one, (1,) as above described and numbered, in which premises the following named persons hold, or claim to hold, an estate, title, or interest: Samuel Walker and Henry C. Gibson, & James Young, trustees of John Gibson, deceased; I. P. Straus and Joseph Straus, of Straus & Bro.; George Sweet.

No. 13. *Lot No.* 13.—Lot on the north side of Fifth street, commencing at the southwest corner of the lot number one hundred and eighteen, (118,) running thence east nineteen (19) ft. to the line of lot number twelve, (12,) above described and numbered; and running thence northwardly, same width in rear as in front, one hundred and forty-three and two-thirds (143⅔) ft., more or less, along the west line of lot number twelve, (12,) as above described and numbered, to the south line of lot number one, (1,) as above described and numbered, in which premises

the following-named persons hold, or claim to hold, an estate, title, or interest: Edward Hurd, Thomas J. Callinan, and Dominick W. Callinan.

No. 14. *Lot No.* 14.—Lot on the north side of Fifth street, commencing at the southeast corner of the lot numbered one hundred and forty-three (143) ft.; running thence northwardly, same width in rear as in front, along the west lines of lots numbered thirteen above, and ninety-two and one-half (192½) ft. to Patterson alley, in which
11 premises the following-named persons hold, or claim to hold, an estate, title, or interest: Ferdinand Bodman, Edward Hurd, John B. Brigel, and H. H. Davis, Frank Avery, Emily A. Roelfson, and William H. Roelfson, Fox Brothers, John Leutz, H. H. Davis, J. Ringarman, John A. Smith.

No. 15. *Lot No.* 15.—Lot on the north side of Fifth street, commencing one hundred and thirty-two (132) ft. east of Walnut street, running thence east seventeen (17) ft. to the west line of lot numbered fourteen (14,) as above described and numbered, and running thence north, same width in rear as in front, along the west line of said lot, numbered fourteen, (14,) one hundred and ninety-two and one-half (192½) ft. to Patterson alley, in which premises the following-named persons hold, or claim to hold, an estate, title, or interest: Temperance H. Keckeler and Adolphus T. Keckeler, her husband; John Ferguson, M. J. McNamara, & Harmon S. Winslow, E. C. Ellis.

No. 16. *Lot No.* 16.—Lot on the north side of Fifth street, commencing about one hundred and eleven & one-quarter (111¼) feet east of Walnut street; running thence east twenty (20) feet & 9 inches to the west line of lot No. 15, as above described and numbered; thence north one hundred and ninety-two and half (192½) ft. along the west line of said lot number fifteen (15) to Patterson alley; thence west twenty (20)
12 feet; thence south ninety-three & half (93½) ft., to the north line of lot number one hundred and forty-three, (143;) thence west with said line nine (9) inches to the place beginning, in which premises the following-named persons hold, or claim to hold, an estate, title, or interest: George Maxwell, Chow Cape; Z. P. Whittock, J. Ringartner, W. Quinby, Michael Ford.

No. 17. *Lot No.* 17.—Lot on north side of Fifth street, commencing about ninety-two (92) feet east of Walnut street; running the' north ninety-nine *nine* (99) ft., to the northern boundary of inlot one hundred & forty-three, (143;) the' east with said line four (4) ft.; thence ninety-three and a half (93½) ft. to Patterson alley; thence east with Patterson alley sixteen, (16,) as above described and numbered; thence south one hundred and ninety-two and a half (192½) ft.; along the west line of said lot No. 16 to Fifth street, nineteen and a quarter (19¼) ft. to place of beginning, in which premises the following-named persons hold, or claim to hold, an estate, title, or interest: Mrs. Caroline Estegeorge, (widow;) Mrs. Caroline Muth and Augustus Muth.

No. 18. *Lot No.* 18.—Lot on the north side of Fifth street, commencing at seventy-two (72) east of Walnut street; running thence north seventy-five (75) ft., to the leasehold property of Jacob Elsas; running thence east with the line of said Elsas' property eight (8) ft., to the southeast corner thereof; thence north one hundred and seventeen and
13 one-half (117½) feet to Patterson alley; thence east with Patterson alley sixteen (16) ft. to the west line of lot numbered seventeen, (17,) as above described and numbered; thence south, following the west lines of lot numbered seventeen, (17,) ninety-three and one-half (93½) ft., to the north line of inlot numbered one hundred and forty-

three, (143;) thence west with said line four (4) ft.; thence south ninety-nine (99) feet to Fifth street; thence west twenty (20) ft., more or less, to the place of beginning; of Elizabeth B. Groesbeck, wife of William S. Groesbeck, is owner in fee, and the following-named persons claim an interest in the leasehold as devisees, under the will of John Sebastian Kohl, viz: Mary R. Kohl, executrix; John Kohl, executor; Mary R. Kohl, (widow;) John W. Kohl, Edward A. Kohl, (a minor;) Louis H. Kohl, (a minor;) Ida P. Kohl, (a minor;) Mrs. W. H. Steyers, W. H. Steyers, Mary P. Kohl, guardian; Benjamin Eggleston.

No. 19. *Lot No.* 19.—Lot on the north side of Fifth street, commencing about fifty-four (54) ft. east of Walnut street; running thence east eighteen (18) ft., more or less, to the west line of lot eighteen (18) as above described & numbered, and running thence back, same width in rear as in front, along the west line of said lot number eighteen, (18,) seventy-five (75) ft. to the leasehold property of Jacob Elsas, in which premises the following-named persons hold, or claim to hold, an estate, title, or interest; Robert W. Burnett and Zebulon B. Coffin, D. Hogan, and S. J. Griffin.

14 *No.* 20. *Lot No.* 20.—Lot on north side of Fifth street, commencing thirty-six (36) ft. east of Walnut street; running thence east eighteen (18) ft., more or less, to the west line of lot number nineteen, (19,) as above described and numbered, and running thence northwardly, same width in rear as in front, along the west line of said lot, number nineteen, (19,) seventy-five (75) feet to the leasehold property of Jacob Elsas, in which premises the following-named persons hold, or claim to hold, an estate, title, or interest: James T. Worthington, T. H. Hewes, & Wm. McCann.

Lot No. 21.—Also the lot commencing on the north side of Fifth street, eighteen (18) feet east of Walnut street; running thence east with the north line of Fifth street eighteen (18) feet, more or less, to the west line of lot No. 20; running thence northwardly, same width in rear as in front, seventy-five (75) feet along the west line of said lot No. twenty, (20,) to the leasehold property of Elsas, in which premises the following-named persons hold, or claim to hold, an estate, title, or interest: Robert W. Burnett, Anne Eliza Cady, Anna E. McGrew, and Samuel P. McGrew, Dohan and brother, T. Sankey, P. Smith and company.

Lot 22.—Also the lot or tract of land on the northeast corner of Fifth and Walnut streets, fronting eighteen (18) feet on the north side of Fifth street, and running back northwardly, same width in rear as in

15 front, seventy-five (75) feet to the leasehold property of Jacob Elsas, adjoining lot number twenty-one (21) as above described and numbered, in which premises the following-named persons hold, or claim to hold, an estate, title, or interest: Jacob Burnet, McLean, Anne Eliza Cady, administratrix, Philander K. Cady, David Cady, Hudson C. Cady, Eva Wright, and Doctor C. O. Wright, Ann Eliza Cady, Caroline B. Post, Henry A. Post, Evaline Whipple, Charles H. Whipple, H. C. Cady, J. E. Winterfield, A. G. G. Morton, R. Kieserling, M. A. Harper, P. Coyle, C. W. Jordan.

Lot 23.—Also part of inlot numbered one hundred and forty-three, (143,) fronting twenty-four (24) feet on the east side of Walnut street, and running back eastwardly within parallel lines, the same width in rear as in front, eighty feet, (80,) bounded on the north by inlot numbered one hundred and forty-four, (144;) on the south by lots eighteen, nineteen, twenty, twenty-one, and twenty-two as above described and numbered, and on the east by lot numbered eighteen, (18,) as above described, in which premises the following-named persons hold, or claim to

hold, an estate, title, or interest: Elizabeth B. Groesbeck, William S. Groesbeck, Jacob Elsas, C. A. Bergman.

Lot 24.—Part of inlot numbered one hundred and forty-four, fronting ninety-three (93) feet six (6) inches on the east side of Walnut street in the city of Cincinnati; and running thence eastwardly within parallel lines eighty (80) feet to the west line of lot numbered eighteen
16 (18) as above described, and bounded on the north by Patterson alley, and on the south by inlot numbered one hundred and forty-three, (143,) in which premises the following-named persons hold, or claim to hold, an estate, title, or interest: Jacob Elsas, Theodore F. Nieman, the Phœnix Society, Lippert, John H. Luhn, M. Duffer, Lockwood and McGuire, A. H. Tieman, F. Wampelmeyer.

Wherefore the said United States prays the court that a jury may be empaneled for an enquiry and assessment of compensation to be paid by the said United States for said property as described and set forth in this application. And that upon payment into court, or to the proper owners defendants herein, of an amount of compensation equal to the sum so assessed by the jury as the value of the parcels of ground above described, that possession be awarded it by this court according to law, and that the absolute title to said property be and thereby vest in the said United States for the purposes aforesaid. And that the court will divide the sum so paid, and order its distribution among the several claimants according to their respective rights herein; and for such other and further orders as may be proper in proceedings for the condemnation of private property to the public use aforesaid.

WARNER M. BATEMAN,
U. S. Atty.

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

17 Warner M. Bateman, being duly affirmed, says that he is the attorney for the United States for the southern district of Ohio, duly authorized in the premises; that the facts set forth in said application are within the personal knowledge of said affirmant, and that the facts and allegations therein stated are true as he verily believes.

WARNER M. BATEMAN.

Affirmed before me, and signed in my presence this 24th day of July, A. D. 1873.

THOMAS AMBROSE,
Clerk U. S. Circuit Court, S. D. of O.

United States circuit, southern dist. Ohio.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
INLOTS 118, 119, 143, & 144, IN THE CITY OF Cincinnati, Ohio, being half square bounded by 5th, Main, and Walnut street, and Patterson alley. } No.

To the clerk United States circuit court, southern dist. of Ohio:

Issue notice in form of summons to the following persons, named in the foregoing petition, as owners & interested in the several lots described therein, to wit: Elizabeth Groesbeck, wife of William S. Groes-

beck, William S. Groesbeck, Samuel F. Cary, Ella W. Sayre, and Edward Sayre, Theodore F. Nieman, The Phœnix Society, I. P.
18 Strauss and Joseph Strauss, of the firm of Strauss & Brother; John B. Brummer and H. H. Ahlering, Frances Demand, John Demand, Mary Demand, Celia Demand, Ella Demand, Carrie Demand, a minor of 15 years age, Clara Demand, a minor of 14 years age, Martha Demand, a minor of 8 years age, Mary A. Field, Henry S. Field, Charles W. Sloan, William P. Hurlbert, Allen W. Gazley, Mrs. Charlotte Taylor, John Taylor, John Taylor, jr., of Covington, Kentucky, Charles Taylor, Abraham B. Taylor, of Cincinnati, William Taylor, Edwin Taylor, Charlotte Taylor, Anna Eliza Taylor, of Covington, Ky., Mrs. Margaret Pharis, Abraham Pharis, John Pharis, Amelia Pharis, Kate Peters, and Peters, her husband, Finney town, near Mount Pleasant, Hamilton County, Teresa Roberts and Aaron Roberts, Mrs. Catharine Hart, 320 Seventh st., William Hart, John Hart, B. Frank Hart, a minor, Anna C. Yourtee and Samuel Yourtee, Mary Catharine Baker & Thomas F. Baker, Winton Place, O., Caroline Horton and Benjamin Horton, of St. Louis, Missouri, Charlotte Cooper and S. S. Cooper, 318 Fourth st., Samuel Walker, Henry C. Gibson, and James T. Young, trustees of John Gibson, deceased, (Philadelphia,) Edward Hurd, Thomas J. Callinan and Donnick W. Callinan, Ferdinand Bodman, John B. Brigel, H. H. Davis, Emily A. Rœlofson and William H. Rœlofson, and Frank Avery of California, Temperance Keckeler and Adolphus Keckeler, John Ferguson, M. J. McNamara, Harmon S. Winston, George Maxwell, Caroline Eitelgeorge, (widow,) Caroline Muth and Augustus Muth, Mary R. Kohl, executrix, Mary R. Kohl, guardian, Mary R. Kohl, (widow,) John W. Kohl, executor, John W. Kohl, Edward
19 A. Kohl, a minor, Lewis H. Kohl, a minor, Ida P. Kohl, a minor, Mrs. W. H. Steyer, & W. H. Steyer, Robert W. Burnett, Zebulon B. Coffin, James T. Worthington, New York, T. H. Hewes and William McCann, Anne Eliza Cady, administratrix, Anne Eliza Cady, Philander K. Cady, David Cady, Hudson C. Cady, Doctor C. O. Wright, and Eva Wright, Jacob Burnet McLean, Caroline B. Post, Henry A. Post, New York, Evaline Whipple and Charles W. Whipple, Minnesota, Anna E. McGrew and Samuel P. McGrew, Home Building Association of Cincinnati, Benjamin Eggleston, Frank Heitz, C. H. Stander, T. C. Nichols, Charles Wautman, Julius Bonstey, Timme, Rabbe, of the firm of Timme & Rabbe, A. S. Hoffman, H. R. Strove, Samuel Nathan, S. Gusteval, Henry Wineman, Joseph Wineman, Leo Wineman and Samuel Nathan of the firm of Wineman, Sons and Company, John Devoto, E. J. Fogarty J. Fishwick, Geo. Miller, J. H. Mann, G. J. West, G. W. White, Geo. Sweet, Fox, Fox, of the firm of Fox and Brother, John Leutz, H. H. Davis, J. Ringarman, John A. Smith, E. C. Ellis, H. S. Chow Cape, (Chinese,) Z. P. Whittock, J. Ringartner, W. Quimby, Michael Ford, D. Hogan, S. J. Griffiith, J. N. Dohan and Thos. B. Dohan, of the firm of Dohan & Brother, T. Lankey, P. Smith, H. C. Cady, J. E. Winterfield, A. G. G. Morton, R. Kesserling, M. A. Harper, P. Coyle, C. W. Jordan, C. A. Bergman, Leppert, John H. Luhn, M. Duffer, William Lockwood and James McGuire, A. H. Tieman, F. Wamfelmeyer, Phœnix Society, notifying them that the plaintiff seeks to appropriate the following-described real estate, viz: All that
20 tract of land situate in the city of Cincinnati, and State of Ohio, being inlots 118, 119, 143, & 144, in said city, and bounded as follows: On the south by Fifth street, on the east by Main street, on the west by Walnut street, and on the north by Patterson alley; and that upon the return day or as soon as notice to the parties above named

shall be completed, it will apply to the honorable judges of the circuit court of the United States for said district, for the impannelling of a jury to assess the compensation to be paid by the United States of America to the owners of said property.

WARNER M. BATEMAN,
U. S. Atty.

And afterwards, to wit, on the 25th day of July, in the year last aforesaid, an entry was made upon the journal of said court, in said cause, in the words and figures following, to wit:

Entry.—Order for service.

THE UNITED STATES *vs.* INLOTS 118, 119, 143, & 144, IN THE CITY OF Cincinnati, Ohio.	1767. Condemnation. Order for service.

Petition having been filed in this cause for the appropriation of land to public use, and the assessment of compensation to be paid for the same, it is ordered that summons issue to the owners of the property described in said petition, returnable on the 8th day of August, 1873, containing a summary statement of the object and prayer of said petition, and notifying such owners that they may appear and be heard in relation thereto.

21 And thereupon, on said 25 day of July, in the year last aforesaid, there was issued out of the clerk's office of said court the writ of summons against the parties herein; which said writ is in the words and figures following, to wit:

Summons.

UNITED STATES OF AMERICA,
Southern Dist. of Ohio:

The President of the United States of America to the marshal of the southern district of Ohio, greeting:

Whereas, The United States of America has filed in this court its petition, duly verified, for the appropriation to its use of certain real estate in the city of Cincinnati on which to erect a custom-house, post-office, and other Government buildings; the real estate so sought to be appropriated being bounded on the south by Fifth street, Market space, on the east by Main street, on the west by Walnut street, and on the north by Patterson alley, comprising inlots 118, 119, 143, and 144 on the original plat of the city of Cincinnati, a particular description of each parcel thereof being contained in said petition.

Said petition asserts the right of petitioner to make such appropriation, and prays that a jury may be empannelled for an inquiry and assessment of compensation to be paid by the said United States

22 for said property. And that upon payment into court, or to the proper owners, of an amount of compensation equal to the sum so assessed by the jury, that possession be awarded by this court according to law; and that the absolute title to said property vest in the United States for the purposes aforesaid, and that the court will divide the sum so paid and order its distribution among the several claimants of said property according to their respective rights therein.

And whereas, upon said petition being filed, the court has ordered a summons to issue to the owners of the property described in said petition, returnable on the 8th day of August, 1873, containing a summary statement of the object and prayer of said petition, and notifying such owners that they may appear and be heard in relation thereto.

And whereas it appears from the said petition that the following named persons hold or claim to hold an estate, title, or interest in said real estate, viz:

Joseph N. A. Benziger, Frank Heitz, C. H. Stander, T. C. Nichols, Charlotte T. Haines, T. W. Heidacker, Samuel F. Cary, Ella W. Sayre, Edward Sayre, I. P. Strauss, Joseph Strauss, Charles Wantman, Julius Bouskey, Timm & Rabbe, John B. Brummer, H. H. Ahlering, Francis Demand, John Demand, Mary Demand, Cecelia Demand, Ella Demand, Carrie Demand, (a minor 14 years of age,) Matthias Demand, (a minor 8 years of age,) Clara Demand, (a minor,) Home Security Building Association of Cincinnati, Mary A. Field, Henry S. Field, Charles W.
23 Sloan, H. R. Struve, Samuel Nathan, S. Gustaval, Wm. P. Hulburt, Henry Winneman, Joseph Winneman, Leo Winneman, Samuel Nathan, John Devoto, Allen W. Gazlay, E. J. Fogarty, J. Fishwick, George Miller, J. H. Mann, Mrs. Charlotte Taylor, John Taylor, Mrs. Catharine Hart, Mrs. Margaret Phares, John Taylor, jr., Charles Taylor, Abraham B. Taylor, William Taylor, Edwin Taylor, Eliza Taylor, Abraham Phares, John Phares, Amelia Pharis, Charlotte Taylor, Kate Peters and Peters, her husband, Theresa Roberts and Aaron Roberts, her husband, Catharine Baker and T. Frank Baker, her husband, Caroline Horton and Benjamin Horton, her husband, Charlotte Cooper & S. S. Cooper, her husband, William Hart, John Hart, B. Frank Hart, (a minor,) Anna C. Yourtee and Sam'l Yourtee, her husband, G. J. Wirt, G. W. White, Samuel Walker, Henry C. Gibson, James T. Young, Geo. Sweet, Edward Hurd, Thomas J. Callinan, Dominick W. Callinan, Ferdinand Boardman, John B. Brigel, H. H. Davis, Frank Avery, Emily A. Roelfson, Fox & Brother, John Leutz, J. Rengannon, John A. Smith, Temperance Keckeler, Adolphus T. Keckeler, John Ferguson, M. J. McNamara, Harmon S. Winslow, E. C. Ellis, George Maxwell, Chow Cape, Z. P. Whittock, J. Ringartner, W. Quimby, Michael Ford, Mrs. Caroline Edelgeorge, Mrs. Caroline Muth and Augustus Muth, her husband, Mary R. Kohl, executrix, John Kohl, ex'r, Mary R. Kohl, John W. Kohl, Edward A. Kohl, (a minor,) Louis H. Kohl, (a minor,) Ida P. Kohl, (a minor,) Mrs. W. H. Steyer and W. H. Steyer, her husband, Mary R. Kohl, (guardian,) Benjamin Eggleston, Robert W. Bur-
24 nett, Zebulon B. Coffin, D. Hogan, S. J. Griffith, Jas. S. Worthington, T. H. Hewes, W. McCann, Ann Eliza Cady, Anna E. McGrew and Sam'l P. McGrew, her husband, J. H. Dohan, Thomas B. Dohan, T. Lankey, Peter Smith & Co., Jacob Burnett McLean, Ann Eliza Cady, adm'x, Philander K. Cady, David Cady, Hudson C. Cady, Eva Wright & Dr. C. O. Wright, her husband, Caroline B. Post and Henry A. Post, her husband, Eveline Whipple & Charles W. Whipple, her husband, H. C. Cady, J. E. Winterfield, A. G. G. Morton, R. Kreserling, M. A. Harper, P. Coyle, C. W. Jordan, Elizabeth B. Groesbeck and W. S. Groesbeck, her husband, Jacob Elsas, C. A. Bergman, Theodore F. Nieman, The Phœnix Society, Lippert, John H. Luhn, M. Duffner, Wm. Lockwood, Jas. McGuire, A. H. Tiernan, F. Wrampelmeyer, & A. S. Hoffman:

You are therefore commanded to make due service of this summons upon the above-named persons, and to make due return thereof on the eighth day of August, 1873, according to law.

Witness the honorable Nathan Clifford, Acting Chief Justice of the United States, this 25th day of July, A. D. 1873, and in the 98th year of the Independence of the United States of America.

[SEAL.] Attest: THOMAS AMBROSE,
Clerk of said Circuit Court.

And afterwards, to wit, on the 7th day of August, in the year
25 last aforesaid, came the said marshal, to whom said writ of summons was in form aforesaid directed, and returned the same into the clerk's office of said court, with his proceedings endorsed thereon in the words and figures following, to wit:

Return of marshal to summons.

Service of this summons accepted by copy for the within-named Ella W. Sayre and Edward Sayre and George Maxwell.
Cincinnati, July 28th, 1873.

S. F. CARY, *Atty.*

COLUMBUS, *July* 29, '73.

Rec'd the within summons at 10 o'clock a. m., and served the copy on John Demand, personally. He agreed to go. He did not want the summons, so I returned the summons as personally served on said J. Demand.

Yours, respectfully,

W. R. THRALL, *U. S. Marshal.*
ROBERT CHADWICK, *Deputy.*

Service of this summons accepted by copy for J. B. McLean, H. A. V. Post, C. B. Post, C. W. Whipple, E. E. Whipple.

N. C. McLEAN, *Atty.*

CIN'TI, *July* 31*st*, 1873.

PIQUA, MIAMI CO., OHIO, *August* 1*st*, 1873.

Served true copy of the within summons in Miami Co., O., as follows:
Personally on Mary A. Kohl, at 2 p. m., 1st day Aug., 1873.
" on Mary A. Kohl, as executrix, at 2 p. m., Aug. 1st, 1873.
26 Personally on Mary A. Kohl, as guardian, at 2 p. m., Aug. 1st, 1873.
" " Ida J. Kohl, a minor, " " " " " " "
" " Edwin A. K Kohl, a minor, " " " " " " " "
" " Mary A. Kohl, as guardian of Ida P. Kohl and Edwin A. Kohl, minors, " " " " " " " "

W. R. THRALL, *U. S. Marshal,*
By P. A. STEDMAN, *Deputy.*

I accept service by copy of within writ for the within-named Theresa Roberts and Aaron Roberts, husband of Theresa Roberts.
CINCINNATI, *Aug.* 4*th*, '73.

J. H. CLEMMER, *Attorney.*

CINCINNATI, OHIO, *Aug't* 8*th*, 1873.

In obedience to the within command, I made legal service of this writ, by true copy hereof, as follows:
Personally on the within-named Frank Heitz, 10.30 a. m.; pers. on C.

H. Stander, at 2.15 p. m.; pers. on T. C. Nichols, at 11 a. m.; at res. on Charlotte T. Haines, at 2.05 p. m.; pers. on T. W. Heidacker, at 10.35 a. m.; pers. on Sam'l F. Cary, at 1.35 p. m; on Ella W. Sayre & Edward Sayre, by pers. serv. on Sam'l F. Cary, their atty., at 1.35 p. m., as is further evidenced by the acceptance of Sam'l F. Cary, hereon endorsed; pers. on I. P. Strauss, at 10.15 a. m.; pers. on Joseph Strauss, at 10.15 a. m.; pers. on Chas. Trautman, at 10.20 a. m.; pers. on Julius Boushey, at 10.20 a. m.; on the firm of
27 Timm & Rabbe, viz: pers. on Edward Timm and J. F. W. Rabbe, members composing said firm, at 10.25 a. m.; pers. on John B. Brummer, at 2 p. m.; pers. on H. H. Ahlering, at 2 p. m.; pers. on Geo. Miller, at 1.45 p. m.; pers. on J. H. Mann, at 10.10 a. m.; on George Maxwell by serv. on Sam'l F. Cary, his atty., at 1.35 p. m., as is further evidenced by the acceptance of Sam'l F. Cary, hereon endorsed. Each of foregoing services made and effected on 28th day July, A. D. 1873. Pers. on J. Fishwick, at 8.20 a. m.; pers. on John Taylor, at 11.20 a. m., at res.; on Charlotte Taylor, at 11.20 a. m.; pers. on J. Ringamon, at 3.50 p. m.; at res. on Temperance Keckeler and Adolphus T. Keckeler, at 9.20 a. m.; at res. on W. Quimby, at 3.55 p. m.; at res. on Michael Ford, 4 p. m.; pers. on Benj. Eggleston, at 8.35 a. m.; pers. on John Hart, at 9.40 a. m. Each of the foregoing services made and effected on 29th day July, A. D. 1873; and on 30th day July, A. D. 1873, served pers. on G. J. Wirt, at 10 a. m.; pers. on John W. Kohl, executor, at 12.10 p. m.; pers. on Jno. W. Kohl, at 12.10 p. m.; pers. on Louis H. Kohl, a minor, at 2.45 p. m.; pers. on Dr. O. E. Davis, guardian of Louis H. Kohl, a minor, at 3 p. m.; pers. on Dr. C. O. Wright, at 11.45 a. m.; pers. on Eva Wright, at 2.15 p. m. And on 31st day July, A. D. 1873, I served the Home Security Building Association of Cin'ti by copy; pers. on E. M. Davis, presid't, at 11.40 a. m., and at res. on George Sands, secretary, at 7.10 a. m.; at res. on Allen W. Gazlay, 7.45 a. m.; pers. on Mrs. W. H. Steyer, at 7.45 a. m.; at res. on W. H. Steyer, her husband, at 7.45 a. m. And on 1st day August, A. D. 1873, served at res. on Mrs. Catherine Hart, at 11.40 a. m.; at res. on B. Frank Hart, a minor, at 11.40 a. m.; pers. on Jno. Hart, guardian of B. Frank Hart, a minor, at 9.40 a. m.; at res. on Edward Hurd, at 11.25 a. m.;
28 on Aaron Roberts and Theresa Roberts by service on J. H. Clemmer, their atty., on 4th Aug., 1873, as per acceptance of said atty. hereunto attached.

W. R. THRALL, *U. S. Marshal.*
By J. P. PHARES, *Deputy.*

And I further served the within named as follows:

On the 28th day July, 1873, pers. on Frances Demand at 10.05 a. m.; pers. on Mary Demand at 10.05 a. m.; pers. on Cecelia Demand at 10.05 a. m.; pers. on Ella Demand at 10.05 a. m.; pers. on Carrie Demand, a minor; pers. on Matthias Demand, a minor; pers. on Clara Demand, a minor, each at 10.05 a. m.; pers. on Frances Demand, guardian of Carrie Demand, a minor; of Matthias Demand, a minor; and of Clara Demand, a minor, at 10.05 a. m.; pers. on H. R. Strive at 9.50 a. m.; Samuel Nathan at 10.15 a. m.; pers. on Joseph Winnerman at 10.15 a. m.; pers. on Leo Winnerman at 9.40 a. m.; pers. on Samuel Nathan at 10.15 a. m.; pers. on John Devoto at 9.50 a. m.; pers. on Chow Cape at 12.20 p. m.; pers. on Z. P. Whitlock, otherwise called E. P. Whitlock, at 12.20 p. m.; pers. on Zebulon B. Coffin at 12.15 p. m.; and on the 29th day July, A. D. 1873, served pers. on M. A. Harper at 12 noon; pers. on Mrs. Caroline Eitelgeorge at 12.15 p. m.; pers. on Mrs. Caroline Muth and Au-

gustus Muth, her husband, at 12.15 p. m.; pers. on David Cady at 12.10 p. m.; pers. on Hudson C. Cady at 12.10 p. m.; pers. on H. C. Cady at 12.10 p. m.; pers. on C. A. Bergman at 11.15 a. m.; pers. on C. L. Lippert at 11.55 a. m.; pers. Wm. Lockwood and A. H. Tieman ea. at 12 m.; and on 30th day July, A. D. 1873, serv'd pers. on Wm. B. Hulbert, 2.05 p. m.; pers on G. W. White at 9.05 a. m.; pers. on Samuel Walker at 10.10 a. m.; pers. on. Geo. Sweet at 11.55
29 a. m.; pers. on Ferdinand Bodman at 9.50 a. m.; pers. on John B. Brigel at 11.05 a. m.; at res., on H. H. Davis, at 2.30 p. m.; pers on John Leatz at 12 m.; pers. on John A. Smith at 9.15 a. m.; pers. on John Ferguson at 9 a. m.; pers. on M. J. McNamara at 12.05 p. m.; pers. on Harmon S. Winslow at 9. 20 a. m.; pers. on E. C. Ellis at 1.05 p. m.; pers. on D. Hogan at 10.25 a. m.; at res. on Ann Eliza Cady, administratrix, at 2.25 p. m.; pers. on A. G. G. Morton, at 9 a. m.; pers. on J. E. Winterfield at 9.30 a. m.; pers. on P. Coyle at 2.35 p. m.; pers. on C. W. Jordan at 2.50 p. m.; pers. on Jacob Elsas at 3 p. m.; pers. on Theodore F. Nieman at 12.35 p. m.; pers. on John H. Luhn at 9.30 a. m.; pers. on James McGuire at 9.35 a. m.; pers. on F. Wrampelmeyer at 2.40 p. m.; pers. on A. S. Hoffman at 2.10 p. m.; and on 31st day July, A. D. 1873, served at res. on Charlotte Cooper at 9.40 a. m.; pers. on S. S. Cooper, her husband, at 9.15 a. m.; pers. on T. H. Hewes at 9.55 a. m.; pers. on W. McCann at 9.55 a. m.; pers. on Ann Eliza Cady at 2.10 p. m.; pers. on Thomas B. Dohan at 3.15 p. m.; pers. on T. Sankey, otherwise called T. Sunkey, at 12.55 p. m.; pers. on D. K. Cady, the only surviving member of the firm of Peter Smith & Co., at 3.20 p. m. The Phœnix Society by pers. on A. Bloom, act. pres., and Charles Shohl, secretary, each at 9.10 a. m.; and on 1st day of August, A. D. 1873, pers. on Anna E. McGrew at 1.30 p. m., who disavows any claim whatever to the property defendant; pers. on J. H. Dohan at 9.10 a. m.

W. R. THRALL, *U. S. Marshal*,
By R. S. McCLURE, *Deputy*.

And I further served the within named as follows:

On the 28th day July, A. D. 1873, pers. on Mrs. Charlotte Taylor; pers. on John Taylor, jr.; pers. on Charles Taylor; pers. on Abraham B. Taylor; pers. on William Taylor; pers. on Edwin Taylor;
30 pers. on Eliza Taylor, each at 2 p. m.; pers. on Kate Peters and pers. on Nicholas Peters, her husband, at 11.30 a. m.; pers. on William Hart at 12 m.; pers. on Thomas J. Callinan and Dominick W. Callinan, each at 11.10 a. m.; pers. on Solomon Fox, Simon Fox, George Fox, & Henry Fox, members of the firm of Fox & Brother, each at 11.20 a. m., all at Cincinnati, O., in said district.

W. R. THRALL, *U. S. Marshal*,
By L. BROWN, *Deputy*.

And on 29th day July, A. D. 1873, I served true copy hereof on John Demand, personally, at 10 a. m., at Columbus, Ohio, in said district.

W. R. THRALL, *U. S. Marshal*,
By ROBT. CHADWICK, *Deputy*.

And on 1st day August, A. D. 1873, at Piqua, Miami Co., O., in said district, served true copy hereof as follows:

Pers. on Mary A. Kohl, executrix; pers. on Mary A. Kohl; pers. on Edward A. Kohl, a minor; pers. on Ida P. Kohl, a minor; pers. on Mary A. Kohl, guardian; and pers. on Mary A. Kohl as guardian of Edward

A. Kohl, a minor, and Ida P. Kohl, a minor, each at 2 p. m. on said 1st day August, A. D. 1873.

W. R. THRALL, *U. S. Marshal*,
By P. A. STEDMAN, *Deputy*.

And on the 31st day July, A. D. 1873, at Walnut Hills, Ham. Co., in said district, served true copy hereof as follows:

At res. on Elizabeth B. Groesbeck, and pers. on W. S. Groesbeck, her husband, each at 5.30 p. m.; pers. on M. Duffner, at 5.10 p. m.;
31 and on Jacob Burnett McLean, Caroline B. Post, Henry A. Post, her husband, otherwise called Henry A. V. Post, Eveline Whipple, otherwise called Eveline E. Whipple, and Charles W. Whipple, her husband, by copy for each on Genl. Nat. C. McLean, their atty., at 6.25 p. m., as is further evidenced by his acceptance for said parties hereon endorsed; pers. on Mrs. Margaret Phares; pers. on John Phares; at res. on Abraham Phares, and at res. on Amelia Phares, each at 5.30 p. m. on 1st day August, A. D. 1873.

W. R. THRALL, *U. S. Marshal*,
By J. E. GALIGHER, *Deputy*.

And on 31st day of July, A. D. 1873, at California, Ham. Co., Ohio, served Anna C. Yourtee and Samuel Yourtee, her husband, by copy left at residence at 3.40 p. m. on said 31st day July, 1873.

W. R. THRALL, *Marshal*,
By A. J. GARDNER, *Deputy*.

And on this 7th day August, 1873, after diligent enquiry and search, I return within-named Joseph N. A. Benziger, Mary A. Field, Henry S. Field, Chas. W. Sloan, S. Gustaval, Henry Winnerman, E. J. Fogarty, Catherine Baker, T. Frank Baker, Caroline Horton, Benj. Horton, Jas. T. Young, Henry C. Gibson, Frank Avery, Emma A. Roelofson, Robt. W. Burnett, S. J. Griffith, James T. Worthington, Philander K. Cady, R. Kieserling, J. Ringartner, and Samuel P. McGrew, not found in my district.

W. R. THRALL, *U. S. Marshal*,
By A. J. GARDNER, *Dep.*

32 And afterwards, to wit, on the 8th day of August, in the year last aforesaid, there was filed in the clerk's office of said court the affidavit of Channing Richards herein, which said affidavit is in the words and figures following, to wit:

Affidavit of C. Richards.

THE UNITED STATES OF AMERICA
vs.
INLOTS 118, 119, 143, AND 144 IN THE CITY of Cincinnati.

Channing Richards, asst. U. S. atty. for the southern dist. of Ohio, and atty. for petitioner in above-entitled cause, being duly sworn, says, that he is informed and believes that the following-named defendants, returned not served by the marshal, are non-residents of the southern district of Ohio, and process cannot be personally served upon them within said district.

1. Joseph N. A. Benziger, New York City.

2. James T. Worthington, New York City.
3. Robert W. Burnett.
4. Hary A. Field.
5. Henry S. Field.
6. Charles W. Sloan.
7. Catharine Baker, St. Louis, Mo.
8. T. Frank Baker, St. Louis, Mo.
9. Caroline Horton, St. Louis, Mo.
10. Benjamin Horton, St. Louis, Mo.
11. Philander K. Cady, Poughkeepsie, N. Y.
12. E. J. Fogarty, Covington, Ky.
13. S. Gustaval.

33 14. Henry C. Gibson, Phila., Penn. } Trustees of John Gibson, de-
15. James T. Young, Phila., Penn. } ceased.

16. Frank Avery.
17. Emily A. Roelofsen.

CHANNING RICHARDS.

Subscribed & sworn to before me this 8th day of August, 1873.

THOMAS AMBROSE,
Clerk U. S. Circuit Court S. D. of O.

And afterwards, to wit, but on the same day, and in the year last aforesaid, an entry was made upon the journal of said court, in said cause, in the words and figures following, to wit:

Entry.—Order for publication.

THE UNITED STATES
vs.
INLOTS 118, 119, 143, & 144 IN THE CITY OF Cincinnati.
} 1767. Condemnation. Order for publication.

It appearing to the court that the summons heretofore issued herein has been returned, not served, upon certain of the parties defendant therein named, and it further appearing by the affidavit of the attorney for petitioner that said parties do not reside within the district, it is ordered that service by publication be made upon said non-resident parties,
34 and that said publication be made for six consecutive weeks in the Cincinnati Daily Gazette. It is further ordered that the seventh day of October, 1873, be fixed as the day of hearing.

And afterwards, to wit, but on the same day, and in the year last aforesaid, an entry was made upon the journal of said court, in said cause, in the words and figures following, to wit:

Entry dismissed as to certain def'd'ts.

THE UNITED STATES
vs.
INLOTS 118, 119, 143, & 144, IN THE CITY OF Cincinnati.
} 1767. Condemnation. Dismissed as to certain def'd'ts.

Comes the petitioner, by Warren M. Bateman, U. S. attorney for the southern district of Ohio, and discontinues this cause as to Samuel P. McGrew, R. Keresling, S. J. Griffith, J. Ringartner, and Henry Winneman.

And afterwards, to wit, on the 16th day of October, in the year last aforesaid, an entry was made upon the journal of said court in said cause, in the words and figures following, to wit:

Entry.—Demurrers overruled.

THE UNITED STATES *vs.* INLOTS 118, 119, 143, & 144, IN THE CITY OF Cincinnati.	1767. Condemnation. Demurrers overruled.

Now, this day, this cause came on to be heard upon the demurrers of Caroline and Augustus Muth and Joseph N. A. Benziger to the jurisdiction of the court, and also upon motions of James S. Worthington and J. P. & J. Strauss to dismiss the case for want of jurisdiction. On consideration whereof, and after full argument, the said demurrers and the said motions are overruled, to which the defendants by their counsel except. And thereupon the cause coming on further to be heard upon the preliminary questions, as provided by law, the court finds that the plaintiff has the legal right to make appropriation of private property, as claimed in the petition. That it is unable to agree with the owners of the property sought to be appropriated as to the value thereof, and that the appropriation is necessary.

35

And afterwards, to wit, on the 21st day of October, in the year last aforesaid, an entry was made upon the journal of said court, in said cause, in the words and figures following, to wit:

Entry.—Order for struck jury.

THE UNITED STATES *vs.* INLOTS 118, 119, 143 & 144, IN THE CITY OF Cincinnati.	1767. Condemnation. Order for struck jury.

On motion of the district attoney on behalf of the United States, and on motion of Jacob Elsas and other defendants in this cause, a struck jury is ordered to try the issues of fact in this case.

And afterwards, to wit, on the 25th day of October, in the year last aforesaid, an entry was made upon the journal of said court, in said cause, in the words and figures following, to wit:

36

Entry.—Order for jury.

THE UNITED STATES *vs.* INLOTS 118, 119, 143, & 144, IN THE CITY OF Cincinnati.	1767. Condemnation. Order for jury.

In pursuance of the order heretofore issued herein for a struck jury, the following-named persons were this day duly selected as such jury. It is therefore ordered that a venire facias issue to the marshal, directing him to summon—

1. CHARLES WELLS,
2. GEORGE W. MCALPIN,
3. WILLIAM GIBSON,
4. C. A. GOULD,

5. WILLIAM SHAFFER,	6. ANIZI MCGILL,
7. JOSEPH F. WRIGHT,	8. P. HEIDELBACH,
9. D. B. PIERSON,	10. HOWELL GANO,
11. R. A. HOLDEN,	12. C. F. WILSTACH,
13. HARRY R. SMITH,	14. EZRA POTTER,
15. C. G. DESHLER,	16. GEORGE D. WINCHELL,

to be and appear as jurors herein, on the 4th day of November, 1873.

And afterwards, to wit, on the 3d day of November, in the year last aforesaid, an entry was made upon the journal of said court, in said cause, in the words and figures following, to wit:

Entry.—J. H. Clemmer made guardian.

THE UNITED STATES
vs.
INLOTS 118, 119, 143, & 144, IN THE CITY OF Cincinnati. } 1767. Condemnation. Clemmer made guardian.

It apearing to the court that Edward A. Kohl, Louis H. Kohl,
37 and Ida P. Kohl, defendants herein, are minors, and have been duly served with process more than twenty days, on motion of the plaintiff, J. H. Clemmer is appointed guardian ad litem for said minors; and the said J. H. Clemmer appears and accepts said appointment.

And afterwards, to wit, on the 3d day of November, in the year last aforesaid, came Edward A. Kohl, Louis H. Kohl, and Ida P. Kohl, minors, by J. H. Clemmer, their guardian, and filed in the clerk's office of said court their answer herein, which said answer is in the words and figures following, to wit:

Answer of Edw. A. Kohl, Louis H. Kohl, & Ida P. Kohl.

Circuit court of the United States.

THE UNITED STATES
vs.
IN LOTS NO. 118, & OTHERS. } No. 1767. Answer.

Edward A. Kohl, Louis H. Kohl, & Ida P. Kohl, minors, by J. H. Clemmer, their guardian ad litem, for answer to petition in above case say, they have an interest in the property sought to be appropriated in this case; they deny all the allegations of the petition prejudicial to their interests; they deny the right of plaintiff to subject the property under proceedings in this case, and, being infants of tender years, they ask the court to protect their interests in the premises.

EDWARD A. KOHL,
LOUIS H. KOHL,
IDA P. KOHL, *Minors*,
By J. H. CLEMMER,
Their Guardian ad litem.

38 And afterwards, to wit, on the 5th day of November, in the year last aforesaid, came Mary R. Kohl and John W. Kohl, executors of John P. Kohl, deceased; Mrs. W. H. Styer and W. H. Styer, her husband; Louis H. Kohl, a minor, and J. H. Clemmer, his guardian ad litem; Edward Albert Kohl, a minor, and J. H. Clemmer, his guard-

ian ad litem; Ida Pauline Kohl, a minor, and J. H. Clemmer, his guardian ad litem; Mary L. Kohl, widow of J. P. Kohl, and John W. Kohl, by Stallo & Kittredge, their attorneys, and filed in the clerk's office of said court their answer herein, which said answer is in the words and figures following, to wit:

Answer of Mary R. Kohl & others.

Circuit court of the United States, southern district of Ohio.

THE UNITED STATES *vs.* INLOTS 118, ETC. } 1767.

And now come Mary R. Kohl & John W. Kohl, executors of John S. Kohl, deceased; Mrs. W. H. Styer and W. H. Styer, her husband; Louis H. Kohl, a minor, and J. H. Clemmer, his guardian ad litem; Edward Albert Kohl, a minor, and J. H. Clemmer, his guardian ad litem; Ida Pauline Kohl, a minor, and J. H. Clemmer, her guardian ad litem; Mary R. Kohl, widow of J. S. Kohl, and John W. Kohl, come and say that they are the owners of a perpetual leasehold estate in lot No. 18, in the petition in this cause described, subject to the pay-
39 ment of an annual ground-rent of twelve hundred dollars, and the taxes and assessments upon said property; and the respondents say that their said property and estate in said premises is of great value, to wit, of the value of twenty thousand dollars, and that there are no diverse or conflicting interests in the said estate of these respondents.

They further say that this court has no jurisdiction of any cause to appropriate the said property of these respondents.

STALLO & KITTREDGE,
Attys. for Mrs. Kohl & the other Parties named.

STATE OF OHIO,
Hamilton Co.:

Mrs. Mary R. Kohl, being duly sworn, says she is one of the respondents named in the above answer, and says that the statements therein made are true.

MARIE R. KOHL.

Sworn to before me, and subscribed in my presence, this 15th day of December, 1873.

[SEAL.]

C. M. LOTZE,
Not. Pub., Ham. Co., O.

And afterwards, to wit, on the 5th day of November, in the year last aforesaid, an entry was made upon the journal of said court in
40 said cause in the words and figures following, to wit:

Entry.—Jury empaneled & sworn.

THE UNITED STATES *vs.* INLOTS 118, 119, 143, & 144, IN THE CITY OF Cincinnati. } 1767. Condemnation. Jury sworn.

This day came the district attorney on behalf of the United States, and the several owners of the property defendant herein by their attor

neys, and thereupon, a jury being called, came, to wit: Charles Wells, William Gibson, C. H. Gould, R. A. Holden, C. F. Wilstach, Ezra Potter, George D. Winchells, John W. Hartwell, William Stones, George T. Stedman, Gassaway Brashears, and Charles Bonsall, who, being duly empaneled, were sworn and affirmed justly and impartially to assess, according to their best judgment, the amount of compensation which is due to the several owners of the property defendant herein by reason of the appropriation of the property described in the petition to the use of the United States in the proceedings now pending, irrespective of any benefit from any improvement proposed by the said United States, and in assessing any damage that may accrue to said several owners of the property defendant herein, by reason of the appropriation other than the compensation; further, to ascertain how much less valuable the remaining portion of said property will be in consequence of such appropriation.

41 And afterwards, to wit, on the 28th day of November, in the year last aforesaid, an entry was made upon the journal of said court in said cause in the words and figures following, to wit:

Entry.—Verdict.

THE UNITED STATES } *vs.* INLOTS 118, 119, &c. } 1767. Condemnation. Verdict.

This day again came the district attorney on behalf of the United States; W. S. Groesbeck on behalf of Elizabeth B. Groesbeck; E. W. Kittredge and W. M. Ramsey on behalf of Mary R. Kohl, executrix, and John W. Kohl; and M. J. Hirschberg on behalf of S. Nathan & Co., and also the jurors heretofore empaneled, sworn, and affirmed herein; and thereupon this cause came on further to be heard as to lot number eighteen, as described in said petition, and was submitted upon the evidence, on consideration whereof the jury find that there is due to Elizabeth B. Groesbeck, owner in fee, 20 feet, at $1,000 per foot, $20,000; to heirs of John S. Kohl, owners of perpetual lease, $6,000; to S. Nathan & Co., lessees, for fixtures, $132.00. And they find there are no other claims. C. H. Gould, John W. Hartwell, Charles Wells, George T. Stedman, Ezra Potter, William Stones, William Gibson, Chas. Bonsall, G. Brashears, R. A. Holden, George D. Winchell, C. F. Wilstach.

And afterwards, to wit, on the 2d day of December, in the year last afore said, came the respondents, the heirs and legatees of John S. Kohl, by Stallo & Kittredge, their attorneys, and filed in the clerk's office
42 of said court their motion for a new trial herein, which said motion is in the words and figures following, to wit:

Motion for new trial, by heirs of J. S. Kohl.

Cir. ct. of the United States, south. dist. of Ohio.

THE UNITED STATES } *vs.* INLOTS 118, 119, &c. }

And now come the respondents, the heirs & legatees of John S. Kohl,

owners of the perpetual leasehold of lot No. 18, described in the petition for a new trial for the reasons following:

1. That the verdict is for an amount less than upon the evidence it should have been.

2. That the court erred in its charge to the jury.

STALLO & KITTREDGE,
Attys. for the Heirs of J. S. Kohl.

And afterwards, to wit, on the 13th day of December, in the year last aforesaid, an entry was made upon the journal of said court, in said cause, in the words and figures following, to wit:

Entry.—Motions for new trial overruled, &c.

THE UNITED STATES } 1767. Condemnation.
vs.
INLOTS 118, 119, &C. }

This cause coming on to be heard upon the motions for new trials, and the same having been fully considered by the court, the following are overruled, to wit: The motion of Ferdinand Bodman for a new trial as
43 to lot 14, as described in the petition; the motions of John A. Smith, J. B. Brigel, and Fox Brothers for new trial as to same lot; the motion of S. H. Keckler for a new trial as to lot 15, as described in the petition; the motion of Jacob Elsas for a new trial as to lot 24, as described in the petition; the motion of John Taylor, executor et al., for a new trial as to lot 11, as described in the petition; the motion of G. W. White for a new trial as to same lot; the motion of Heidacker and Mayer for a new trial as to lot 2, as described in the petition; the motion of J. B. McLean for a new trial as to lot 22, as described in the petition; the motion of Ann Eliza Cady, executrix et al., for a new trial as to same lot; the motion of Robert W. Burnett for a new trial as to lot 21, as described in the petition; the motion of Ann Eliza Cady for a new trial as to same lot; the motion of Mary R. Kohl, executrix et al., for a new trial as to lot 18, as described in the petition; the motion of I. P. Strauss & Co. for a new trial as to lot 13, as described in the petition; the motion of I. P. Strauss & Co. for a new trial as to lot 4, as described in the petition. And the court further considering the motion of said I. P. Strauss & Co. for a new trial as to lot 3, as described in the petition, finds that upon the evidence they should have been awarded one hundred dollars, but the attorney for the United States assenting that such allowance be added to the verdict therein, the motion for a new trial is overruled. And the court further considering the motion of Samuel Walker for a new trial as to lot 11, as described in the petition, finds that
44 upon the evidence he should have been awarded fifty dollars for his fixtures, but the attorney for the United States assenting that such allowance be added to the verdict therein, the motion for a new trial is overruled.

And afterwards, to wit, on the 16th day of December, in the year last aforesaid, came John Gerke, treasurer of Hamilton County, and State of Ohio, by F. J. Mayer, his deputy, and filed in the clerk's office of said court his application for the payment of taxes herein, which said application is in the words and figures following, to wit:

Application of treasurer of Hamilton Co. for payment of taxes.

THE UNITED STATES
vs.
INLOTS 118, 119, &C.

Now comes Jno. Gerke, treasurer of Hamilton County, and shows to the court that taxes accrued and became a lien upon the several tracts of land included in the lots 118, 119, 143, & 144 in the city of Cincinnati, said lien dating from April 13th, 1873, viz:

Lot	1.	J. N. A. Benziger	363 66
	2.	E. L. Haines	253 44
	3.	Saml. F. Cary	434 00
	4.	Brummer & Ahlering	156 12
	5.	F. Demand	157 04
	6.	C. E. Williams, est	252 06
	7.	W. P. Hulbert	228 30
	8.	A. W. Gaslay	393 42
	9.	W. P. Hulbert	310 62
	11.	A. Babbinger, est	551 84
45	12.	Saml. Walker	448 06
	13.	Ed. Hurd	321 38
	14.	F. Bodman, 404.94; 981.90	1,386 84
	15.	S. H. Keckler	339 22
	16.	Geo. Maxwell	400 80
	17.	A. Eitelgeorge, est	495 10
	18.	Jno. S. Kohl, est	363 90
	19.	Z. B. Coffin	300 94
	20.	Hewes & McCann	308 32
	21.	A. E. Cady	383 72
	22.	D. K. Cady, est	386 96
	23.	Jacob Elsas	285 26
	24.	Jacob Elsas	1,184 14

And said treasurer now moves the court to order said taxes to be paid out of the funds herein.

JOHN GERKE,
Co. Treasurer.
Per F. J. MAYER, *Dpty.*

And afterwards, to wit, but on the same day and in the year last aforesaid, came the United States, by Warner M. Bateman, its attorney, and filed in the clerk's office of said its motion for the payment of taxes herein, which said motion is in the words and figures following, to wit:

Motion of U. S. for the payment of taxes.

THE UNITED STATES
vs.
INLOTS 118, 119, &c.

Now comes the district atty., on behalf of the United States, and
46 moves the court to provide for the payment of taxes out of the funds herein as prayed by the treasurer of Hamilton County.

WARNER M. BATEMAN,
U. S. Atty.

And afterwards, to wit, on the 17th day of December, in the year last aforesaid, an entry was made upon the journal of said court, in said cause, in the words and figures following, to wit:

Entry.—Motion to pay taxes overruled.

THE UNITED STATES *vs.* INLOTS 118, 119, &c. } 1767. Condemnation. Motion to pay taxes overruled.

This day came the parties, by their attorneys, and thereupon this cause came on to be heard upon the application of the treasurer of Hamilton County, and the motion of the district attorney for the payment of the taxes out of the funds herein, as assessed upon the property herein condemned, and was argued by counsel and submitted. Upon consideration thereof the court dismiss said application and overrule said motion.

And afterwards, to wit, but on the same day and in the year last aforesaid, an entry was made upon the journal of said court, in said cause, in the words and figures following, to wit:

Entry.—Judgment as to lot 18.

THE UNITED STATES *vs.* INLOTS 118, 119, &c. } Condemnation. Judgment as to lot No. 18.

47 This cause coming on to be further heard upon the petition of the United States, the findings of the court upon the preliminary inquiries, and upon the claim of the treasurer of Hamilton County for taxes, and the verdict of the jury duly empaneled and sworn to ascertain the compensation due to the several owners and claimants of the property described in the petition; and it appearing to the court that said property has been legally appropriated by the United States, under the right of eminent domain; that Elizabeth B. Groesbeck and William S. Groesbeck, her husband, Mary R. Kohl, widow, John W. Kohl and Edward A. Kohl, Louisa H. Kohl and Ida P. Kohl, minors, represented by Mary R. Kohl, guardian, Mrs. W. H. Steyers and W. H. Steyers, S. Nathan & Co. appeared and claimed compensation by reason of the appropriation of lot No. 18 as described in said petition, and that the jury has found the amount due by reason of such appropriation to be: to said Elizabeth B. Groesbeck, twenty thousand ($20,000) dollars, to said John W. Kohl, Edward A. Kohl, Louisa Kohl, Ida P. Kohl, and Mrs. W. H. Steyers, six thousand ($6,000) dollars, and to S. Nathan & Co. one hundred and thirty-two ($132) dollars, and that there are no other claimants. It is therefore ordered, adjudged, and decreed by the court that upon the full payment by the United States of said sum to said Elizabeth B. Groesbeck, twenty thousand ($20,000) dollars, to said John W. Kohl, Edward A. Kohl, Louisa Kohl, Ida P. Kohl, and Mrs. W. H. Steyers six thousand ($6,000) dollars, and to S. Nathan & Co. one hundred and thirty-two ($132) dollars, or into court for their use, the title to
48 said lot, commencing at 72 feet east of Walnut street; running thence north 75 feet, to the leasehold property of Jacob Elsas; running thence east with the line of said Elsas property 8 feet, to the southeast corner thereof, thence north 117½ feet to Patterson alley; thence east with Patterson alley 16 feet, to the west line of lot No.

17 as above described; thence south, following the west lines of lot No. 17, 93½ feet, to the north line of in lot 143; thence west with said line 4 feet; thence south 99 feet, to Fifth street; thence west twenty feet, more or less, to the place of beginning, shall vest in the United States, and a writ of possession is awarded to put the United States in possession thereof. And it is further ordered that the United States pay the costs herein, taxed at $

And afterwards, to wit, on the 24th day of December, in the year last aforesaid, an entry was made upon the journal of said court, in said cause, in the words and figures following, to wit:

Entry.—Judgment as to costs.

THE UNITED STATES } 1767. Condemnation. Judgment as to costs.
vs.
INLOTS 118, 119, &C. }

Now comes this case on to be heard upon the taxation of costs, and the same are taxed at the sum of ($3,913.39) three thousand nine hundred thirteen $\frac{39}{100}$ dollars. Whereupon it is ordered that, upon the payment of said costs by the United States into court, in addition to the amounts heretofore awarded and adjudged to the claimants
49 and owners of the property described in the petition, writ of possession is awarded to the United States in pursuance of the law regulating the proceeding in this case.

And afterwards, to wit, on the 24th day of December, in the year last aforesaid, an entry was made upon the journal of said court, in said cause, in the words and figures following, to wit:

Entry.—Final judgment.

THE UNITED STATES } 1767. Condemnation. Final judgment.
vs.
INLOTS 118, 119, ETC. }

And now comes the district attorney and shows to the court that the United States has, in pursuance of the judgments heretofore rendered herein, paid into the the registry of the court for the use of the persons severally named, as follows: For Hiedacker & Meyer, four hundred and sixty-six $\frac{67}{100}$ dollars, ($466.67;) for Callinan & Brothers, one hundred and fifty dollars, ($150.00;) for John W. Kohl, Edward A. Kohl, Louisa Kohl, Ida P. Kohl, and Mrs. W. H. Steyers, ($6,000.00,) six thousand dollars; for I. P. Strauss & Company, two hundred dollars, ($200.00;) for I. P. Strauss & Company, five hundred and twelve ($512.00) dollars; for I. P. Strauss & Company, two hundred and fifty ($250.00;) for John A. Smith, seven hundred ($700.00) dollars; for John B. Brigel, five hundred ($500.00) dollars, and for Michael Duffner four hundred ($400.00) dollars; and that the sums of money awarded and adjudged to be paid in the judgments herein to the other owners
50 and claimants have been paid to them by R. H. Stephenson, disbursing-officer of the United States, in pursuance of said judgments, as follows, to wit: To Joseph N. A. Benziger, thirty thousand ($30,000.00) dollars; to Charlotte T. Haines, fifteen thousand ($15,000) dollars; to Samuel F. Cary, twenty-five thousand five hundred ($25,500.00) dollars; to Ella W. Sayre, twelve thousand seven hundred and fifty ($12,750.00)

dollars; to Brummer and Ahlering, eleven thousand five hundred and twenty-five ($11,525.00) dollars; to Francis Demand, in her own right and as guardian for Caroline, Clara, and Matthias A. Demand, and to Ella Demand, eleven thousand nine hundred and twenty-five ,($11,925.00;) to Mary A. Field and Charles W. Sloan, forty thousand three hundred ($40,300.00) dollars, one-half thereof to each; to S. Garsdorfer, one hundred and seventy-five ($175.00) dollars; to H. R. Strueve, one hundred ($100.00) dollars; to S. Nathan, one hundred and twenty-five ($125.00) dollars; to Charles Devoto, eighty ($80.00) dollars; to William P. Hulbert, fifteen thousand five hundred and sixty $\frac{42}{100}$ ($15.560.42) dollars; to Wineman Sons & Company, fifty ($50.00) dollars; to A. W. Gazlay, twenty-five thousand two hundred and eighty-five $\frac{93}{100}$ ($25,285.93) dollars; to D. Fishwick, one hundred and fifty ($150.00) dollars; to William P. Hulbert, nineteen thousand six hundred and eleven $\frac{09}{100}$ ($19,611.09) dollars; to John Taylor, executor of Abraham Babinger, deceased, thirty-two thousand four hundred ($32,400.00) dollars; to Samuel Walker, fifty ($50.00) dollars; to George W. White, four hundred ($400.00) dollars; to Samuel Walker, fifteen thousand
51 and sixty-two $\frac{50}{100}$ ($15,062.50) dollars; to Henry C. Gibson and James Young, trustees of John Gibson, deceased, fifteen thousand three hundred and seventy-five ($15,375.00) dollars; to John Davis, guardian of Charles Sweet, one hundred ($100.00) dollars; to Matthew H. Coats, guardian in fact of Anna Hurd, Rukard Hurd, and James B. Hurd, heirs at law of Edward Hurd, deceased, twenty-four thousand eight hundred ($24,800.00) dollars; to Ferdinand Bodman, sixty-nine thousand and forty-four $\frac{63}{100}$ ($69,044.63) dollars; to Hiram H. Davis, nine hundred and fifty-five ($955.00) dollars; to Temperance H. Keckler, twenty-three thousand ($23.000.00) dollars; to John Ferguson and W. J. Macnamara, three hundred ($300.00) dollars; to George Maxwell twenty-five thousand two hundred and fifty ($25,250.00) dollars; to Mrs. Caroline Eitelgeorge, Mrs. Caroline Muth, and Augustus Muth, twenty-nine thousand five hundred ($29,500.00) dollars; to Elizabeth B. Groesbeck, thirty-five thousand ($35,000.00) dollars; to S. Nathan & Company, one hundred and thirty-two ($132.00) dollars; to Robert W. Burnett, fifteen thousand three hundred ($15,300.00) dollars; and fourteen thousand four hundred ($14,400.00) dollars; to Zebulon B. Coffin, nine thousand nine hundred ($9,900.00) dollars; to James T. Worthington, fifteen thousand three hundred ($15,300.00) dollars; to Hewes & McCann, ten thousand six hundred ($10.600.00) dollars; to Ann Eliza Cady, eleven thousand five hundred ($11,500.00) dollars; to J. Burnett McClain, eighteen thousand ($18,000.00) dollars; to devisees of D. K. Cady,
52 deceased, thirteen thousand eight hundred ($13,800.00) dollars; to J. E. Winterfield, one hundred and fifty ($150.00) dollars; to Jacob Elsas, seventeen hundred andfifty ($1,750.00) dollars, and eighty-eight thousand eight hundred and sixty-three $\frac{33}{100}$ ($88,863.33 dollars; in all, ninety thousand six hundred and thirteen $\frac{33}{100}$ ($90,613.33) dollars; to C. A. Bergman, two hundred and fifty ($250.00) dollars; to Phœnix Society, eleven hundred and sixty-six $\frac{67}{100}$ ($1,166.67) dollars; to A. H. Tieman, four hundred and twenty ($420.00) dollars; to Theodore F. Nieman, four hundred ($400.00) dollars; to J. H. Luhn, four hundred and fifty ($450.00) dollars; and to Lockwood & McGuire, two hundred and fifty ($250.00) dollars. And that the said United States has paid into the registry of the court all costs herein taxed in pursuance of the order herein entered, and having so paid the damages and compensation so awarded to the claimants and owners of the premises described in the petition herein, and also the costs herein taxed and adjudged, the

court finds that the United States has become entitled to the possession of said premises under and by virtue of its appropriation aforesaid. Wherefore it is ordered and adjudged that a writ of possession issue, upon precipe filed by the district attorney therefor, to the marshal, commanding him to remove from said premises the said occupants and owners thereof, and to place the United States, by its proper agents and officers, in possession thereof.

53 And afterwards, to wit, on the same day, and in the year last aforesaid, an entry was made upon the journal of said court, in said cause, in the words and figures following, to wit:

Entry.—Bills of exception allowed.

THE UNITED STATES } *vs.* IN LOTS 118, 119, &c. } 1767. Condemnation. Blls of exception alowed.

And now come Mary R. Kohl and John W. Kohl, executors, et al., and I. P. Strauss & Brother, and present to the court their several bills of exception to the findings of the court and jury herein, which are allowed by the court, signed, sealed, and ordered to be made a part of the record herein.

And which said bill of exceptions of Mary R. Kohl and John W. Kohl, executors, et al., is in the words and figures following, to wit:

Bill of exceptions of Mrs. Kohl et al.

Circuit court of the United States, southern dist. of Ohio.

THE UNITED STATES OF AMERICA } *vs.* IN LOTS 118, ETC. } No. 1767. Bill of exceptions.

Be it remembered that at this term of the court, before the empannelling of a jury herein, came Mary R. Kohl and John W. Kohl, executors of John S. Kohl, deceased; Mrs. W. H. Styer and W. H. Styer, her husband; Louis H. Kohl, a minor, and J. H. Clemmer, his guardian ad litem; Ida Pauline Kohl, a minor, and J. H. Clemmer, her guardian
54 ad litem; Edward Albert Kohl, a minor, & J. H. Clemmer, his guardian ad litem; Mary R. Kohl, widow of J. S. Kohl; and John W. Kohl, and moved this court to dismiss this proceeding seeking to appropriate their estate and interest in the property in the petition described, for that the proceeding is unauthorized by law, and this court has no jurisdiction thereof; which motion the court overruled, and the said respondents excepted. And thereupon the said respondents demanded a separate trial of the value of their leasehold estate in the parcel of land described in their answer, it being admitted by counsel for the United States that their interest & estate therein was such as alleged in said answer; and the court overruled said demand, and required that the jury should appraise the value of the parcel of property to be taken, and that these respondents should, in the same trial, try the value of their leasehold estate, together with the lessors of said premises. And the court, in said trial, required the lessor & lessees each, separately, to state the nature of their estates to the jury, and to

offer his testimony separately, and the lessor, then the lessees, to offer theirs, and then permitted the Government to answer the testimony of the lessor and the lessees' in said trial, and instructed the jury to find & return, separately, the value of the estates of the lessor & the lessees in said trial.

And to the overruling of the respondents for a separate trial, and to the ruling of the court requiring these respondents to try the value of their leasehold estate jointly with the lessors, these respondents
55 excepted, and prayed the court that this their bill of exceptions be allowed. Signed and sealed by the court, and ordered to be recorded herein, which is done & ordered accordingly.

[SEAL.] PHILIP B. SWING,
Circuit Judge.

And afterwards, to wit, on the 13th day of January, in the year of our Lord one thousand eight hundred and seventy-four, came Mary R. Kohl and John W. Kohl, executors of John S. Kohl, decd.; Mrs W. H. Steyer and W. H. Steyer, her husband; Edward A. Kohl, Louis H. Kohl, and Ida P. Kohl, and Mary R. Kohl, and John W. Kohl, and filed in the clerk's office of said court their error-bond herein, which said bond is in the words and figures following, to wit:

Error-bond.

Supreme Court of the United States.

Know all men by these presents that we, John W. Kohl, J. C. W. Hesse, and Wm. Sabin, are held and firmly bound unto the United States of America in the sum of five hundred dollars, to be paid to the United States of America; to which payment, well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors, & administrators firmly by these presents, sealed with our seals, dated this 13th day of January, 1874.

Whereas Mary R. Kohl and John W. Kohl, executors of John S. Kohl, decd.; Mrs. W. H. Steyer and W. H. Steyer, her husband;
56 Edward A. Kohl & J. H. Clemmer, his guardian ad litem; Louis H. Kohl and J. H. Clemmer, his guardian ad litem; and Ida P. Kohl and J. H. Clemmer, her guardian ad litem; Mary R. Kohl and John W. Kohl, have prosecuted a writ of error to the Supreme Court of the United States, in a cause entitled, The United States of America vs. In lots No. 118, 119, 143, & 144 in the city of Cincinnati, being the half-square bounded by Fifth street, Main & Walnut streets, and Patterson alley, to reverse the judgment rendered in the above-entitled action by the circuit court of the United States in and for the southern district of Ohio:

Now, therefore, the condition of this obligation is such that if the above-named Mary R. Kohl & John W. Kohl, executors of John S. Kohl, deceased; Mrs. W. H. Steyer and W. H. Steyer, her husband; Edward A. Kohl, Louis H. Kohl, and Ida P. Kohl, by their guardian ad litem, J. H. Clemmer; Mary R. Kohl, and John W. Kohl, shall prosecute the said writ of error to effect and answer all costs and damages if they shall fail to make good their plea, then this obligation shall be void; otherwise, to remain in full force & virtue.

J. W. KOHL. [SEAL.]
WM. SABIN. [SEAL.]
T. C. W. HESSE. [SEAL.]

Sealed and delivered in presence of—

The judge approves this bond & the securities as good and sufficient, & has fixed the amount thereof simply to cover the costs in the
57 case, being of opinion that no bond for damages is required of the party, being of opinion that the writ of error & bond do not operate as a supersedeas and stay of execution in this case.

PHILIP B. SWING,
Judge of the Circuit Court.

58 THE UNITED STATES OF AMERICA, } *ss:*
Southern District of Ohio. }

I, Thomas Ambrose, clerk of the circuit court of the United States for said district, hereby certify that the foregoing is a true and correct transcript of the record and proceedings had in the case numbered 1767, on the docket of said court, The United States of America against In lots 118, 119, 143, and 144 in the city of Cincinnati, so far as the same relate to the interest of Mary R. Kohl and John W. Kohl, executors of John S. Kohl, deceased; Mrs. W. H. Steyers and W. H. Steyers, her husband; and Edward A. Kohl, Louis H. Kohl, and Ida P. Kohl, claimants and owners, defendant' in said case.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Cincinnati, this thirteenth day of January, A. D. 1874, and in the 98th year of American Independence.

Attest:
[SEAL.]

THOS. AMBROSE,
Clerk Cir. Ct. U. S., S. D. O.

59 Supreme Court of the United States.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States within and for the southern district of Ohio, greeting:

Because in the record and proceedings, and also in the rendition of a judgment in a plea, which is in said circuit court before you, between the United States of America, plaintiff, and in lots 118, 119, 143, & 144, in the city of Cincinnati, wherein Mary R. Kohl and John W. Kohl, executors of John S. Kohl, deceased; Mrs. W. H. Steyer and W. H. Styer, her husband; and Edward A. Kohl, Louis H. Kohl, and Ida P. Kohl, claimed an estate and interest, defendants, a manifest error hath happened, to the great damage of the said claimants, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington on the second Monday in the month of October next, in the said Supreme Court then and there to be held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

60 Witness the honorable Nathan Clifford, Acting Chief-Justice of the said Supreme Court of the United States, this 13th day of January, in the year of our Lord one thousand eight hundred and

seventy-four, and of the Independence of the United States of America the 98th.

Attest:

[SEAL.]

THOS. AMBROSE,
Clerk U. S. Circuit Court S. D. of O.

I hereby certify that a copy of the within writ of error was deposited in the clerk's office of the U. S. circuit court for the southern district of Ohio this 13th day of January, A. D. 1874, for the said the United States of America.

THOS. AMBROSE, *Clerk.*

I hereby acknowledge the service of this writ by copy thereof.
Cin'ti, Jany. 13th, 1874.

WARNER M. BATEMAN,
U. S. Atty, S. D. O.

Per R.

61 THE UNITED STATES OF AMERICA:

Supreme Court of the United States.

To the United States of America, greeting:

Whereas Mary R. Kohl and John W. Kohl, executors of John S. Kohl, deceased; Mrs. W. H. Steyer and W. H. Steyer, her husband; and Edward A. Kohl, Louis H. Kohl, and Ida P. Kohl have obtained the allowance of our writ of error to the circuit court of the United States within and for the southern district of Ohio, directed to remove into the said Supreme Court, to be holden at the city of Washington on the second Monday in the month of October next, the record of a certain plaint, process, proceedings, and judgment in an action of condemnation, wherein you, the said the United States of America, in that action, lately recovered against the said Mary R. Kohl and John W. Kohl, executors of John S. Kohl, deceased; Mrs. W. H. Steyer and W. H. Steyer, her husband; and Edward A. Kohl, Louis H. Kohl, and Ida P. Kohl a judgment, appropriating for the uses of the said the United States of America their estate and interest in the following-described property, to wit, lot No. 18 in the city of Cincinnati, State of Ohio, situate on the north side of Fifth street, commencing at seventy-two (72) feet east of Walnut street, running thence north seventy-five (75) feet to the leasehold property of Jacob Elsas, running thence east with the line of said Elsas property eight (8) feet to the southeast corner thereof; thence north one hundred and seventeen and one-half (117½) feet to Patterson alley; thence east with Patterson alley sixteen (16) feet to the west line of lot numbered seventeen, (17,) as above described and numbered; thence south, following the west lines of lot numbered seventeen, (17,)
ninety-three and one-half (93½) feet, to the north line of in
62 lot numbered one hundred and forty-three (143;) thence west
with said line four (4) feet; thence south ninety-nine (99) feet to Fifth street; thence west twenty (20) feet, more or less, to the place of beginning, as by the said record in the said circuit court remaining appears, in which said record and proceedings, and also in the rendition of the judgment thereupon, manifest error hath intervened, as by the said Mary R. Kohl and John W. Kohl, executors of John S. Kohl, deceased; Mrs. W. H. Steyer and W. H. Steyer, her husband; and Edward

A. Kohl, Louis H. Kohl, and Ida P. Kohl we are informed, and our said writ of error granted, issued, and allowed as aforesaid, for the purpose of correcting the error aforesaid alleged, if any there be. You are therefore hereby commanded and cited to be and appear before the judges of the said Supreme Court at the city of Washington, at the next term of said court, to be holden on the second Monday in the month of October next, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

Witness the honorable Nathan Clifford, Acting Chief-Justice of the United States of America, this 13th day of January, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States of America the 98th.

[SEAL.] PHILIP B. SWING,
Judge of the U. S. Dist. Ct.,
No associate justice or circuit judge being present.

I hereby acknowledge service of the within citation for the United States of America, the defendant in error.

Cin'ti, January 13th, 1874.

WARNER M. BATEMAN
U. S. Atty. S. D. O.

Per R.

I hereby certify that a copy of the within citation was deposited in the clerk's office of the U. S. circuit court for the southern district of Ohio this 13th day of January, A. D. 1874, for the said the United States of America.

THOS. AMBROSE, *Clerk.*

63 Supreme Court of the United States.

MARY R. KOHLE AND JOHN W. KOHLE, EXRS., et al., plfs. in error,
vs.
THE UNITED STATES OF AMERICA, DEFT. IN error.

Inlots 118, 119, 143, & 144, in the city of Cincinnati, being half square, bounded by 5th street, Main, Walnut street, & Patterson alley.

October term, A. D. 1874.

Afterward, to wit, at this same term of the court, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, D. C., comes the said Mary R. Kohl and John W. Kohl, executors of John S. Kohl, deceased; Mrs. W. H. Steyer and W. H. Steyer, her husband; and Edward A. Kohl, Louis H. Kohl, and Ida P. Kohl, by J. H. Clemmer, their guardian ad litem; Mary R. Kohl and John W. Kohl, by Stallo & Kittredge, their attorneys, and say that in the record & proceedings aforesaid there is manifest error in this, to wit: 1. That the said circuit court of the United States for the
64 southern district of Ohio had no jurisdiction of the cause & proceedings in said record set forth, nor to render the judgment therein rendered. 2. That the said circuit court erred, in refusing & overruling the motion of these plaintiffs in error to dismiss said proceedings. 3. That the said circuit court erred in refusing and overruling the

application of these plaintiffs in error for a separate trial. And the said parties above named pray that said judgment may be reversed, annulled, and altogether held for naught, and that they may be restored to all things that they have lost by the occasion of said judgment.

By STALLO & KITTREDGE, & FRED. CHASE,
Attys. for Plffs. in Error.

(Indorsement on cover:) No. 144. Mary R. Kohl & John W. Kohl, executors of John S. Kohl, deceased; Mrs. W. H. Steyer and W. H Steyer, her husband; Edward A. Kohl, Louis H. Kohl, and Ida P. Kohl, plaintiffs in error, vs. The United States. S. Ohio C. C. U. S. Filed 28 January, 1874.

Supreme Court of the United States.

No. 144.

Mary R. Kohl, et al.

vs.

The United States.

In Error to the Circuit Court of the United States, for the Southern District of Ohio.

BRIEF FOR PLAINTIFFS IN ERROR.

STALLO & KITTREDGE,

Counsel for Plaintiffs in Error.

Aldine Printing Works, 8 East Fourth Street, Cincinnati.

Supreme Court of the United States.

No. 144.

Mary R. Kohl, et al.

vs.

The United States.

In Error to the Circuit Court of the United States, for the Southern District of Ohio.

BRIEF FOR PLAINTIFFS IN ERROR.

ABSTRACT OR STATEMENT OF THE CASE.

THE case was a proceeding instituted in the Circuit Court of the United States for the Southern District of Ohio, by the District Attorney of the United States, to appropriate a lot of land in the City of Cincinnati for a site for a Post Office and other public buildings.

The Plaintiffs in Error owned a perpetual leasehold estate in a portion of the property sought to be appropriated. They moved to dismiss the proceeding on the ground of the want of jurisdiction, which motion was overruled, R. p. 25,

They demanded a separate trial of the value of their estate in the property which was refused, and they were required to try the question of the value of their property jointly with Wm. S. Groesbeck, who was the lessor of the property to the Plaintiffs in Error, and whose estate in the property was also sought to be taken. Upon the verdict the Circuit Court proceeded to render a judgment, and adjudged that a writ of possession issue requiring the Marshal to remove the Plaintiffs in Error from the premises and to place the United States by its proper agents in possession thereof.

ERRORS ASSIGNED.

The errors relied upon are:

1st. That the said Circuit Court had no jurisdiction of the cause and proceedings in the record set forth, nor to render the judgment therein rendered.

2d. That the Circuit Court erred in refusing the demand of the Plaintiffs in Error for a separate trial of the value of their estate in the property in question.

ARGUMENT.

HAD the Circuit Court of the United States jurisdiction of this proceeding to appropriate the property of the Plaintiffs in Error?

This question involves the inquiry by what title was this proceeding instituted in the Circuit Court? Was it by virtue of a power of eminent domain in the National Government, under the authority of an act of Congress, or was it by virtue of the power of eminent domain of the State of Ohio under the authority of the laws of the State Legislature? If it is in the exercise of a power of eminent domain in the National Government then the acts of Congress authorizing the exer-

cise of the power and prescribing the tribunal and the mode of proceeding must be pointed out. If it is under the authority of a law of the State, then the United States, in instituting and prosecuting the proceeding, is the agent of the State exercising a delegated authority, which it can do only in the way and before the tribunals that the State, in delegating the power, has pointed out and prescribed.

The Circuit Court affirmed its jurisdiction upon the ground that the proceeding asserted title to take the property under a power of eminent domain in the National Government. It is not our intention to discuss the proposition that the National Government possesses the power of eminent domain, nor that it may appropriate property for the uses for which the property in this case was sought to be taken. It is a fact of some significance, in considering whether Congress has provided for the exercise of such a power by the laws to which reference is made in this case, that it is historically true that for upwards of eighty years after the foundation of the Government no act of Congress was ever passed for the exercise of the power, or for acquiring property for such purposes otherwise than by purchase or by appropriation under the authority of the State laws in the State tribunals. It was the policy of Congress, in the past, not to raise the question indicated, and to avoid the opposition of those jealous of an apparent invasion of State rights and State sovereignty which an assertion of this power would have provoked. We may fairly say that no construction of an act of Congress changing this policy, that is founded on mere inference or implication from the language used, will be sanctioned by this Court, and we may do this without raising the questions of the validity of an act which should expressly provide for the exercise of a

national power of eminent domain, nor of the purpose for which such a power may be exercised.

There are three acts of Congress which have reference to the acquisition of a site for a Post Office in Cincinnati. The first, approved March 2d, 1872, 17 *Stat. at Large*, 39, is as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to purchase a central and suitable site in the City of Cincinnati, Ohio, for the erection of a building for the accommodation of the United States Courts, custom house, United States depository, post office, internal revenue and pension offices, at a cost not exceeding three hundred thousand dollars: Provided, That no money which may hereafter be appropriated for this purpose shall be used or expended in the purchase of said site until a valid title thereto shall be vested in the United States, and until the State of Ohio shall cede its jurisdiction over the same, and shall duly release and relinquish to the United States the right to tax or in any way assess said site and the property of the United States that may be thereon during the time that the United States shall be or remain the owner thereof."

In the appropriation act of June 10th, 1872, 17 *Stat. at Large*, 352, a further provision was made as follows:

"To commence the erection of a building at Cincinnati, Ohio, for the accommodation of the United States Courts, custom house, United States depository, post office, internal revenue and pension offices, and for the purchase, at private sale or by condemnation, of ground for a site therefor, the entire cost of completion of which building is hereby limited

to two million two hundred and fifty thousand dollars (inclusive of the cost of the site of the same), seven hundred thousand dollars; and the act of March 12th, 1872, authorizing the purchase of a site therefor, is hereby so amended as to limit the cost of the site to a sum not exceeding five hundred thousand dollars."

And in the subsequent appropriation act of March 3d, 1873, 17 *Stat. at Large*, 523, a further provision was inserted as follows:

"For purchase of site for the building for custom house and post office at Cincinnati, Ohio, seven hundred and fifty thousand dollars."

These are all the acts of Congress which were claimed by Counsel or by the Court below to have authorized the taking of the property under the national power of eminent domain.

It was said that these acts did invoke the exercise of this power, and that under them a cause of a civil nature at common law was provided for, whereof the Circuit Court under the 11th Section of the judiciary act of 1789 would have a concurrent jurisdiction with the State Courts, which proceeding, so authorized, would be regulated by the act regulating the practice in the Federal Courts, approved June 1st, 1872, 17 *Stat. at Large*, 197.

If it should be conceded, which we do not intend to concede, that the power *to purchase* a site for the erection of a post office, expressed in the above act of March 12th, 1872, when taken in connection with the language of the subsequent acts, includes authority to acquire title by condemnation under the national power of eminent domain, we respectfully submit to the Court that the exercise of the power of eminent domain did not at all necessarily involve any judicial proceeding in

the Circuit Court, nor in any other Court. It is true that the 5th article of the amendment of the constitution provides that "private property shall not be taken for public use without just compensation," but this does not require that the compensation shall be ascertained by a judicial tribunal. The assessment of the value of the property, for the purpose of taking it, is in its nature precisely like the assessment of its value for the purpose of taxation. They are both valuations of the property to be made as the legislature may prescribe to enable the Government in the one case to take the whole of it, and in the other to take part of it, by virtue of its sovereign powers, for public use. No one but Congress could prescribe in either case that the valuation should be made in a judicial tribunal, or by a judicial proceeding, although doubtless the legislature might authorize it to be made in that manner in either of the cases. In truth it was not the practice until a recent period, for the State legislatures in most of the States, when they authorized the exercise of this power under the sovereign power of the State, to require the property to be assessed by a Court, or any judicial proceeding to be instituted, when the property was taken. Its value was ordinarily assessed by commissioners, or other ministerial officers, appointed in a variety of ways, but exercising no judicial functions any more than an auditor does who assesses property for taxation, or than an appraiser does who values it for the purpose of having an import duty imposed upon it.

See *Willyard vs. Hamilton*, 7 *Ohio, pt. 2d, page* 111. *Kramer vs. the Cleveland & Pittsburg R. R. Company*, 5 *Ohio State*, 140, *and see p.* 145. *Bonaparte vs. Camden & Amboy R. R. Company*, 1 *Baldwin* 222. *Sedgwick on Statutory and Constitutional Law, p.* 529 *and cases there cited.*

If it be admitted that Congress might, in the exercise of the power of eminent domain, provide that the property should be taken through the instrumentality of a judicial proceeding to be prosecuted in the Circuit Court, there can be as little doubt that it might resort to other instrumentalities, might cause the property to be appraised by a commission, or by the Secretary of the Treasury, or to be taken at the price at which it was listed by the owner for taxation, or in any other mode which Congress might deem would secure just compensation to the owner of it. And now the act of Congress being entirely silent upon the subject, how can it be said that Congress, which can alone provide for the exercise of this sovereign power, *and the mode in which it shall be exercised,* has authorized a suit to be brought, of a civil nature, at common law, whereof the State Courts must have concurrent jurisdiction with the Circuit Court, under the 11th Section of the judiciary act, as a mode in which this site for a post office in Cincinnati might be acquired? If Congress has said that the condemnation should be by a judicial proceeding in the Circuit Court, we could understand how the act of June 1st, 1872, regulating the practice in that Court, which was relied upon by the Circuit Judge, would become applicable to the case. But the question is not one as to the practice and mode of proceeding in causes that are brought in that Court, but it is as to there being any cause that is authorized to be brought in that Court. The Circuit Court is a Court of special and limited jurisdiction, and has no power but such as is expressly given to it by law. No State legislation can confer upon the Court any jurisdiction of a cause which is pursued to assert the National power of eminent domain. And Congress has never, by any provision

of a special or general character, given the Circuit Court jurisdiction of proceedings for the condemnation of property which Congress might provide should be appropriated for public use.

The argument is made, that as Congress authorized the Secretary of the Treasury "*to purchase*" a site, that purchase includes every mode of acquiring property other than by descent or escheat, and consequently includes authority to appropriate it in the exercise of the National power of eminent domain. It is said that this view is strengthened by the language of the appropriation of June 10, 1872, which is "for the purchase at private sale, or by condemnation." To this we answer, that in view of the uniform policy of the Government, when land was to be acquired by condemnation, to obtain it under the authority of the State Government, as the agent of the State in the exercise of its power of eminent domain, doubtless this mode of acquiring the property was in the contemplation of Congress. This is made still more apparent by the language of the same section of the act, which appropriated a further sum for the "purchase" of a site in Cincinnati, and also appropriated $800,000.00 "to obtain by purchase, or to obtain by condemnation in the Courts of the State of Massachusetts," a site for a post office in Boston. 17 *Stat. at Large*, 524. Indeed, there are no words of more frequent use in Congressional legislation than the words "to purchase." Thus the same act appropriates another sum of money to enable the Secretary "to purchase" of Little, Brown & Company two thousand copies of the 17th volume of the Statutes at Large, see p. 512; and similar instances of the use of these words are of constant occurrence. Of course it will be admitted that Congress generally, when it

uses such language, does not intend to authorize the National power of eminent domain to be invoked in making the purchase. And surely nothing less than an implication, that was necessary and unavoidable, would warrant the conclusion that Congress used the words in a different sense in any special case. The taking of property without the consent of the citizen is in derogation of common right, and, unless it is clearly shown to be conferred by law, the authority does not exist, *R. R. Company vs. Kip*, 46, *N. Y.*, 546. And the entire absence of any provision by Congress, providing for any mode of exercising the power, would seem to be conclusive that it was not intended to grant it. At any rate, this want of legislation to provide that the power shall be exercised through the instrumentality of a judicial proceeding, or a "cause" of any kind in the Circuit Court or in any other tribunal, can not be supplied by any other than the legislative department of the Government.

I.

The difficulty of finding any authority of law for the Circuit Court to entertain jurisdiction of a proceeding to condemn property in the exercise of the National power of eminent domain, may lead the counsel for the Government to abandon the ground on which the Circuit Court rested its own jurisdiction, and to seek to claim that the property was taken under a title derived from the State of Ohio, through legislation authorizing the property to be taken in the exercise of the sovereign power of eminent domain inherent in the State. It is sought to liken the case to cases, where State legislation has provided a remedy to assert a right of property, or redress an injury that would otherwise be remediless, and has sought

to restrict the prosecution of the right of action thus given to the State Courts. The familiar case of a right of action for an injury caused by negligence, and resulting in the death of the injured party, was considered very fully by this Court in the case of the *Railway Company vs. Whitten*, 13 *Wallace*, 270.

But we submit that these cases are not at all analogous to the case at bar. In the cases referred to, the State legislation simply establishes a general rule as to property or personal rights, which may be enforced, between proper parties, in the Federal Courts. But in the case at bar the State Legislature delegates the sovereign power of eminent domain of the State. The United States, if it accepts the grant of power, accepts it as any other corporation does, as the agent of the State. When the State grants to its agent authority to exercise its own power of eminent domain, it can affix to the grant whatever limitations or conditions it chooses. It may prescribe in what form, in what tribunal, and on what conditions the power shall be exercised by its agent to whom it is granted. And the United States, if it accepts the grant, like any other corporation or individual, must accept it and exercise it precisely in the mode and in the tribunal, and subject to all the conditions which the State legislation has prescribed. In the cases referred to, where State legislation establishes a rule of property or personal rights, the State law does not, strictly speaking, create or confer a right. It simply provides a remedy to enforce a right. That is to say, it removes an obstruction, and provides a channel for the administration of justice. That is a very different thing from the delegation of its power of eminent domain, which, like its taxing power,

the State may exercise through its own agents and Courts, subject to no control by the Federal Government.

In accordance with the rule of the Court, we here present so much of the Statutes of the State as bear upon the questions presented in our argument.

"Act of February 15th, 1873, entitled: An Act to authorize the United States to appropriate land in the State of Ohio, 70 *O. L.* 36, *Section* 1. Be it enacted by the General Assembly of the State of Ohio, That whenever it shall become necessary for the United States of America to acquire title to a tract of land in this State for any purposes, and the State shall have given its consent to such acquisition, it shall be lawful for said United States of America to acquire such land by appropriation; and for such purpose the "Act prescribing the mode of assessment and collection of compensation to the owners of private property appropriated by and to the use of corporations," passed April 23, 1872, and all acts amendatory thereof, are hereby made applicable, and said United States in appropriating such property, shall, in all respects, be governed by the acts herein referred to, and such other acts supplemental thereto and amendatory thereof as may be passed and be in force when such proceedings take place: Provided, that the United States may pay the costs, including such reasonable attorney fees as may be allowed by the Court, to the person or persons whose property is sought to be appropriated, and refuse to make the appropriation, if, in their judgment, the compensation assessed is too great to justify the appropriation."

The Act of *April* 23, 1872, 69 *O. L.* 88, is voluminous. We print the *1st and 8th Sections*, and deem it sufficient for the decision of this case to say that the remaining 27 Sections

provide in detail for a special proceeding in the Probate Court of the County where the property is situated.

"An Act, Prescribing the mode of assessment and collection of compensation to the owners of private property appropriated by, and to the use of corporations."

"*Section* 1. Be it enacted by the General Assembly of the State of Ohio, That all appropriations of private property by and to the use of any and every corporation now existing, or that may hereafter be created by or under the laws of this State, which may be authorized by law to make such appropriation for any purpose which may be within the scope of the legal authority of such corporation, shall be made and conducted in accordance with the provisions of this act."

"*Section* 8. Each application by petition shall constitute but one proceeding, though several parcels of property and owners are named; but the owner or owners of each separate parcel shall be entitled to a separate trial, verdict, and judgment. The officers, jurors, and witnesses shall only be entitled to a single fee, and there shall be but one cost bill taxed against such corporation."

II.

The second point, upon which we allege error, is that the Circuit Court refused the demand of the Plaintiffs in error for a separate trial of the value of their estate in the property taken, as shown by the bill of exceptions upon page of the record, and can be very briefly stated.

If the proceeding was, upon any title, properly in the Circuit Court, then the act of June 1st, 1872, 17 *Stat. at Large*, 522, required the proceeding to conform to the requirement.

of the law of the State, in a like proceeding in the State Court. The 8th section of the State law above recited, secured to the owners of "each separate parcel" of property a separate trial, verdict, and judgment, and compelling the owners of the perpetual leasehold estate to try the value of their estate with the owners of the reversion, had the effect to put these parties into antagonism with each other before the jury. It was liable to the same objection that would arise in taking a whole square, comprising several different lots belonging to different owners, and requiring the jury to try and assess the value of the property as a whole, and then to apportion the amount so found among the different owners. In such a mode of proceeding, it would obviously become the interest of each owner to depreciate the value of his neighbor's property, which arose from any circumstances peculiar to it. The law intended to protect the parties against any such damage by the confusion incident to the trial of their cause, in connection with the cause of other owners who had a wholly distinct interest. And we submit that the Court below erred in e[illegible]enying this demand of the Plaintiffs in Error. *Giesy vs. C.* pl[illegible] *& Z. R. R. Co.* 4 *Ohio State Rs., pp.* 308 *and* 342.

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STALLO & KITTREDGE.

Stanley Matthews

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

MARY R. KOHL ET AL., PLAINTIFFS IN ERROR,
vs.
THE UNITED STATES.
} No. 144.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

Brief for the United States.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

MARY R. KOHL ET AL., PLAINTIFFS IN ERROR,
vs.
THE UNITED STATES. } No. 144.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

Brief for the United States.

I.

The first objection is to the jurisdiction of the court from which this cause is brought. Though some statesmen, of that class whose habit of thought led them to conclude that the Federal Government had not the constitutional right to defend its own existence from the attack of the States composing the Union, have denied to the United States the right of eminent domain, we presume it will not be seriously contested now and here. It is inherent in the very idea of sovereignty, "an inseparable incident of sovereignty." Geisy *v,* C. W. & Z R. R. Co., 4 Ohio St., 323–4; West River Bridge *v.* Dix, 6 How., 507, 531–2, 539; 2 Kent's Com., *339 and note

c; Cooley Const. Lim., 526; Sedg. Const. Law, 423–4; Vattel, sec. 1, chap. 20, sec. 244; New Orleans *v.* United States, 10 Pet., 723; Pollard *v.* Hagan, 3 How., 223; 2 Story on Const., chap. 18, especially sec. 1146; Williams *v.* School Dist., 33 Vt., 271. Of course, the right of the United States is superior to that of any State; Dobbins *v.* Comms., 16 Pet., 447.

The existence of a public necessity for new buildings in Cincinnati was declared by Congress when it passed the act approved March 12, 1872, chap. 45, 17 Stat. at Large, 39, authorizing the Secretary of the Treasury to purchase site for them; and by act approved June 10, 1872, chap. 415, 17 Stat. at Large, 352–3, making an appropriation for that purchase, whether made by private sale or condemnation; and by act of March 2, 1873, chap. 227, 17 Stat. at Large, 523. The authority to purchase included the right of condemnation; (4 Kent's Com., *372; Burt *v.* Ins. Co., 106 Mass., 364; 7 Op. of Atty. Gen., 114;) but Congress, by the use of that term, indicated an expectation that it might and would be resorted to, and that the exigency justified it.

The legislature of Ohio concurred in this view of the power and necessity of such action, and passed an act of expropriation, approved April 20, 1872. Vol. 69, Ohio Laws, pp. 81–2. The courts and legislatures of other States, in similar cases, have conceded the right of the United States thus to take property, and have aided in promoting its exercise; (Redall *v.* Bryan, 14 Md., 444; Gilmer *v.* Lime Point, 18 Cal., 229; Burt *v.* Mechanics' Ins. Co., 106 Mass., 356; Ex. p. Townshend, 39 N. Y., 171,) but the right of the State to act as an agent of the Federal Government, in actually making the seizure, has

been denied by the Michigan court in Trombley *v.* Humphrey, 23 Mich., 471, 477, in which the opinion by Judge Cooley sustains this position with great cogency of argument.

If, then, the power to take be undeniable, and if the ground taken by Judge Cooley be correct, that it cannot be done through State tribunals, which have no authority "to assess the compensation," (23 Mich., 477,) recourse must be had to the Federal courts to complete the exercise of this constitutional right in a case in which Congress declares an exigency requiring a resort to it to have arisen. Ableman *v.* Booth, 21 How., 515–517.

The Constitution, by the eighth section of the first article, authorizes Congress to establish post-offices, to exercise authority over all places purchased for the erection of needful buildings, and to make all laws necessary and proper for carrying this and other powers into execution; which, when made, become the supreme law of the land. This necessarily includes the right and power to acquire sites for post-offices, &c.; and by appropriation, if thought necessary. Dickey *v.* Turnpike Co., 7 Dana, 113; 2 Story on the Const., sec. 1146.

By the second section of Art. III of the Constitution, the judicial power extends to all cases arising under the Federal Constitution and laws; and "to *controversies* to which the United States shall be a party."

By the judiciary act of 1789, chap. 20, sec. 9, 1 Stat. at Large, 77, the district and circuit courts were vested with jurisdiction concurrently with the State courts, of all suits at common law where the United States sue.

The eleventh section of the same act, 1 Stat. at Large, 78, gives to the circuit courts original cognizance "of all

suits of a civil nature at common law or in equity" where the United States are plaintiffs or petitioners; and, to the end that the jurisdiction thus conferred may be properly exercised, (section 14, 1 Stat. at Large, 81, 82,) authorizes the issue of certain specified processes, "and *all other writs not* specially provided for by statute which may be necessary," &c., "and agreeable to the principles and usages of law."

By section 25, 1 Stat. at Large, 85, the final judgment or decree of State tribunals "in any *suit*," &c., is subject to review in this court.

What is a "suit?" It is more comprehensive than "action." Co. Lit., 291, a; 2 Burrill's Law Dict., 955; Wayman *v.* Southard, 10 Wheat., 30; Didier *v.* Davidson, 10 Paige, 516, 517. It seems to be synonymous in this statute with case. Wharton defines it to be, "a *petition* to a court." Whar. Law Lexicon, 919. Bouvier gives the definition of Marshall, C. J., in Weston *v.* Charleston, 2 Pet., 464, which is the authoritative exposition of this court of the meaniug of that word in this connection. "The term is certainly a very comprehensive one, and is understood to apply to *any proceeding* in a court of justice by which an individual pursues that remedy in a court of justice which the law affords. The modes of proceeding may be various, but if a right is litigated in a court of justice, the proceeding by which the decision of the court is sought is a suit." 2 Pet., 464. Therefore, a writ of prohibition was held to be a suit, as a writ of right had previously been declared, in Green *v.* Liter, 8 Cranch, 229. It includes "not merely suits which the common law recognizes as among its old and settled proceedings, but suits in which legal rights were to be ascertained and determined," in contradistinc-

tion from equity and admiralty, such as cases of partition, &c. Parsons *v.* Bedford, 3 Pet., 447; Cohens *v.* Virginia, 6 Wheat., 379; Jones *v.* Seward, 41 Barb., (N. Y.) Sup. Ct., 272,; Clark *v.* Sohier, 1 W. & M., 368. So of a writ of habeas corpus. It is the petitioner's "suit in court to recover his liberty;" per Taney, C. J., in Holmes *v.* Jennison, 14 Pet., 564; (Story, McLean, Wayne, and Catron, p. 567, concurring upon this point.) It is the "pursuit of some claim, demand, or request." Cohens *v.* Virginia, 6 Wheat., 407, 408. Therefore, a libel for divorce has been held to be included within this term. Kolb's Case, 4 Watts, 154.

Irrespective of congressional enactment as to the form of remedy pursued, the United States having the right to sue as a party in the circuit court, can there adopt the remedies and procedure employed by the State courts in similar cases. Wilson *v.* Mason, 1 Cranch, 45; Parsons *v.* Bedford, 3 Pet., 444; Supervisors *v.* Rogers, 7 Wall., 175. See act of June 1, 1872, chap. 255, secs. 5 and 6, 17 Stat. at Large, 197.

No provision of local law confining a remedy to a State court can affect a suitor's right to apply to the Federal tribunals. Hyde *v.* Stone, 20 How., 170, 175; Payne *v.* Hook, 7 Wall., 425; Railway Co. *v.* Whitton, 13 Wall., 270.

Therefore, the representative of the Government had the right to pursue in the circuit court the remedy given by the legislature of Ohio, by act of February 15, 1873, 70 Ohio Laws, 36; being substantially the same method as pointed out by act of April 23, 1872, 69 Ohio Laws, 88–97.

II.

AS TO THE CLAIM OF SEPARATE TRIALS.

The power to consolidate different suits, by various parties, brought at different times, so as to determine a general question by a single trial, is expressly given by act of July 22, 1813, 3 Stat. at Large, 21; R. S., chap. 18, sec. 921, p. 175.

The statute in Ohio, 69 Ohio Laws, 88, requires that the trial be had as to each *parcel* of land taken, not as to every interest in each parcel.

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